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H.R. 2798—EMPLOYMENT RIGHTS FOR MEMBERS OF THE SELECTED RESERVE AND NATIONAL GUARD

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ORIGINAL

HEARING

BEFORE THE

SUBCOMMITTEE ON
EDUCATION, TRAINING, AND EMPLOYMENT

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

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H.R. 2798—EMPLOYMENT RIGHTS FOR MEMBERS OF THE SELECTED RESERVE AND NATIONAL GUARD

WEDNESDAY, APRIL 23, 1986

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON EDUCATION, TRAINING AND EMPLOYMENT, COMMITTEE ON VETERANS' AFFAIRS

Washington, DC.

The subcommittee met, pursuant to call, at 2:20 p.m., in room 334, Cannon House Office Building, Hon. Thomas A. Daschle (chairman of the subcommittee) presiding.

Present: Representatives Daschle, Gray, and McEwen.

OPENING STATEMENT OF CHAIRMAN DASCHLE

Mr. DASCHLE. This hearing will come to order.

I apologize for being late. We have a vote on the floor right now, and I am sure other Members will be coming as they vote. I want to welcome everyone here this afternoon.

The subcommittee is meeting today to review H.R. 2798, a bill to prohibit discrimination in employment against an individual because he or she is a member of the National Guard or Reserves. H.R. 2798, which I am very proud to cosponsor, was originally introduced by our distinguished chairman of the full committee, "Sonny" Montgomery, who will be our leadoff witness today.

Beginning in 1940 and continuing to the present, Congress has protected the citizen soldier who leaves employment to perform military duty for his country by safeguarding the former service member's return to preservice employment. Under current law, however, there is no protection for members of the Guard and Reserves against discrimination in initial employment because a jobseeker is a member of the Reserve component.

Although Federal law prohibits employers from discriminating against jobseekers because of their race, sex, age or union affiliation, guardsmen and reservists are not similarly protected. It has been brought to the attention of the subcommittee that because discrimination based on participation in Reserve components is not prohibited there may be instances of employers refusing to hire reservists and guardsmen because of their military status.

Additionally, surveys of members of the Selected Reserve who have decided to discontinue their participation indicate that problems with civilian employers is a major reason for leaving the Reserve service. We must do whatever we can to minimize these employer-related difficulties because the National Guard and Reserves

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are the primary source for augmentation of the Active Forces in any emergency requiring rapid and substantial expansion of the Active Forces. It is critical to our national defense that all components of the Reserves stay fully manned by high-quality personnel. H.R. 2798 is clearly designed to assist in the achievement of that goal.

Before we go to our first witness I had intended to recognize the distinguished ranking minority member, Mr. McEwen, for an opening statement. I will reserve the right to call upon him just as soon as he arrives.

We are grateful to have with us the witnesses who will be appearing today, but a special welcome is certainly extended to our first witness, "Sonny" Montgomery, the chairman of the full Veterans' Affairs Committee and author of H.R. 2798. I can say without equivocation that there is no one who has been more of an active and enthusiastic and successful leader with regard to National Guard and Reserves issues than has "Sonny" Montgomery. Within the last week, I can say authoritatively, he was the author of a very successful amendment on the floor of the House to assist the National Guard and ensure they have the kind of equipment and supplies necessary to maintain their role—a growing role, an important role, and a role the vast majority of the Members of the Congress enthusiastically support. So it is with great enthusiasm we welcome him and with interest we listen to his comments this afternoon.

STATEMENT OF THE HONORABLE G.V. (SONNY) MONTGOMERY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI AND CHAIRMAN, VETERANS' AFFAIRS COMMITTEE

Mr. MONTGOMERY. Thank you very much, Mr. Chairman.

I want to endorse what you said about the Reserve forces. We are having a good week this week. I have been thinking about it. how we have gotten involved in the Reserves and National Guard, and I think it comes down to this. We have got a good product to sell. It is a good buy for the taxpayers to have strong National Guard and Reserve forces in this country. There are many people in this room today who have worked just as hard or harder than I have trying to improve the Reserve forces. But as we depend more on the Reserves, we do develop problems, and one of these problems, or two of these problems, I will discuss in my remarks today. But thank you, Mr. Chairman, for your support of the Reserves. I will be in South Dakota next weekend at your invitation to meet with the Air National Guard of South Dakota, and I look forward to that.

Mr. DASCHLE. Well, I can say they are certainly looking forward to your coming. Thank you again for your willingness to take some time to do so.

Mr. MONTGOMERY. Mr. Chairman, at the beginning of the 99th Congress, I consulted with the leadership of the National Guard and Reserve community concerning action which could be taken to improve the readiness of the Nation's Reserve components. I sought the advice of these leaders because of the increased emphasis on these forces as a cost-effective means of providing for a significant portion of the Nation's defense.

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As a part of the country's total force, the Reserve components are assuming increased roles and also an increase in the number of missions. For example, by fiscal 1989, the combined Reserve component strength is programmed to be 51 percent of the total Army from either the Army National Guard or the Army Reserve, 20 percent of the total Navy, 24 percent of the total Air Force, and 22 percent of the total Marine Corps. And also, about 50 percent of the support in combat missions are now given to the Reserve forces.

With the help of the individuals I have referred to, we established a series of readiness initiatives which I have been pursuing during the 99th Congress. These initiatives included such issues as manpower, equipment, facilities, and family support. Of the seven, the one initiative which seems to be viewed with most concern by commanders and reservists in general is that of employer support.

Without the support of the employer, the required numbers of reservists will not be available. So we must take action to encourage the support of the employer for his reservist employee. We must see that the employer is rewarded for encouraging Reserve duty participation by his employee.

In an attempt to reward the patriotic employer who incurs the additional cost and inconvenience of employing reservists, and it does create problems for employers, I have introduced H.R. 3241, a bill which would provide a tax credit for those employers who allow employees to participate over and above the normal training requirements already on the books. I believe the great majority of employers across the country are deserving of this type of benefit.

There is, however, another side of the employer-employee relationship. During the formulation of my and others' readiness initiatives it was brought to our attention, and this is rather sad, that certain employers were apparently discriminating against reservists and refusing to hire them because of their Reserve obligations. While this practice may not be widespread, I do not believe even one such case of discrimination should be tolerated. I have introduced H.R. 2798, which is the subject of the hearing this afternoon. I believe the discrimination problem still exists and feel that this bill is the best approach in seeking a remedy. The bill simply extends the reemployment rights which reservists currently enjoy under title 38 to the initial hiring situation.

I note from your witness list that you will be hearing from many distinguished witnesses who are very familiar with H.R. 2798. Some of these witnesses were instrumental in drafting the language of this bill. I look forward to hearing from them, Mr. Chairman, and I know that they will enlighten us on the testimony which will help the subcommittee decide how to proceed.

I want to thank you again for giving me the opportunity to be the leadoff witness. I feel strongly, if we are going to give all these missions to the Reserves and the National Guard, the key to it is employer support. We should start tackling that problem now, and that is why I have introduced this legislation.

Mr. DASCHLE. We certainly thank you, Mr. Chairman. I think that sets the tone for this hearing this afternoon, and it certainly lays out in a very concise way the best arguments on why this legislation needs to be passed. Thank you for providing us with the

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benefit of your thinking on this bill and for the leadership you have already demonstrated. We are grateful to you for sharing your time with us this afternoon.

At this time I would like to yield to the distinguished ranking minority member, Mr. McEwen, for any comments that he might have.

Mr. MCEWEN. Thank you, Mr. Chairman. As is customary, I have some excellent spontaneous impromptu remarks that I would like to submit for the record at this point.

Mr. DASCHLE. Without objection.

[The prepared statement of Congressman McEwen appears on p. 35.]

Mr. MCEWEN. And then I also want to point out to the chairman how very grateful I am for his leadership in this area again yesterday on the floor. As one who has great admiration and respect for those Americans that contribute of their time and their talents to maintain our national defenses through the Air Reserve and National Guard, I am delighted and grateful that General Montgomery has faithfully overseen their efforts, has protected them on the Armed Services Committee and thereby has provided the greatest service to our national defense that anyone can provide; that is, encouraging quality personnel to man our Armed Forces. I thank him for his testimony and look forward to the witnesses.

Thank you, Mr. Chairman.

Mr. DASCHLE. Thank you, Mr. McEwen.

We live in a town of adjutant generals and attorneys general. I don't think we have but one congressional general, and we are very proud of him. We thank you for coming before us this afternoon, sir.

Mr. MONTGOMERY. Thank you.

Mr. DASCHLE. Oh, excuse me. I am sorry. I am cutting you off early and we have one of our more illustrious members here.

Mr. GRAY. Before this witness gets away I just want to tell you I have been around here off and on for 32 years, and this is the most intelligent, erudite witness that I have ever seen appear before this committee, or the Committee on Public Works, or anyplace else.

Mr. DASCHLE. Well, we really grilled him this afternoon.

[Laughter.]

Mr. GRAY. And I told him I would talk either for this bill or against it, whichever would help him the most.

[Laughter.]

Mr. GRAY. I also want the record to show that I recently traveled to Nicaragua with the General, and he is just as intelligent about other matters as he is on this bill, so I don't see how I could do anything but vote for it.

Mr. DASCHLE. Sounds like a pretty overwhelming endorsement to me.

Mr. MONTGOMERY. Thank you. Mr. Chairman, can I tell a story on Ken Gray there?

Mr. GRAY. I move we now adjourn.

Mr. MONTGOMERY. We went to Nicaragua, and it was an interesting trip. I, like Ken, was a little concerned about our safety down there. And as we got closer to Nicaragua, flying in, the dusk was settling. It was getting dark. And Ken mentioned to me a couple of

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times about maybe we should have some Marine protection. So I thought that was a good idea. And when we got down to Nicaragua and were in the capital city there, a lot of people met us and I took the ambassador off to the side and I said, we would like to have some Marine protection here. We want to be sure, I am CODEL and I have the responsibility nobody gets hurt. He said, "Heck, I ain't got but 10 Marines," and he said, "I'm not going to give them to you."

[Laughter.]

Mr. MONTGOMERY. He said, "You are safe down here. They are not going to bother you."

Mr. DASCHLE. We are glad you are back safe and sound.

Our next witness is the Honorable Donald Shasteen, the Assistant Secretary for Veterans' Employment and Training, the U.S. Department of Labor, and he is accompanied by Mr. Joseph Juarez.

Mr. Shasteen, we are pleased you could be with us again this afternoon. We invite you to proceed with your testimony. The entire text of your statement will be submitted for the record and you can proceed in any way that you see fit.

STATEMENT OF HON. DONALD E. SHASTEEN, ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR; ACCOMPANIED BY JOSEPH JUAREZ, DIRECTOR, OFFICE OF EMPLOYMENT, RE-EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR

Mr. SHASTEEN. Thank you very much, Mr. Chairman. It is, indeed, a privilege to be here with you today to testify on H.R. 2798. I will submit the text of my testimony for the record, and would like at this time just to summarize the highlights.

First of all, this bill, H.R. 2798, would close what we feel is a very unfortunate and for those of us who work closely with it a repugnant and costly loophole in the antidiscrimination laws. Under the present law, the Veterans' Reemployment Rights Act, a reservist or National Guard member, as you know, has the right to take unpaid leave of absence from his or her civilian job to participate in military drills or active duty for training. The present law states that the reservist or the Guard member, and I quote, "shall not be denied retention in employment or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces." Under the present law as currently written an employer is forbidden to fire an employee because of his or her military obligations and it is unlawful, of course, to discriminate against such an employee with respect to promotions or other advantages of employment.

However, as currently written, the law does not prevent another significant form of discrimination, and that is discrimination in hiring. Other employment discrimination statutes covering race, sex, age, and union affiliation outlaw discrimination in hiring as well as other forms of employment discrimination. So H.R. 2798 would provide the same protection for Reserve and National Guard members that other antidiscrimination in employment laws provide for the general population.

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I have with me today Mr. Joe Juarez, who is the director of our program office. We have just recently combined all of our program areas into one office and that is under the direction of Mr. Juarez, so we now have the veterans' reemployment rights program under the same, or in the same division within our agency as the employment and training programs. He is here to assist me in answering any questions that you may have.

Mr. DASCHLE. Thank you, Mr. Shasteen.

[The prepared statement of Mr. Shasteen appears on p. 36.]

Mr. DASCHLE. You noted that current law makes it illegal to fire an employee because of his or her military obligation. It is also illegal to discriminate against such an employee in terms of promotions and other aspects of employment. Are employees being fired or discriminated against in terms of promotion because of Guard or Reserve responsibilities and obligations?

Mr. SHASTEEN. Yes, we do have instances of that, Mr. Chairman. And under the present law we have a field force of specialists plus our entire, approximately 200-member strong, field agency to receive those complaints and investigate them. Where we cannot resolve those complaints amicably with the employers, and I might say we do resolve about 95 percent of them amicably, where we do not we refer the complaint, after our investigation, to the Department of Justice with a recommendation that it be prosecuted. The Department of Justice then takes over and assigns lawyers at the expense of the Government to uphold that entitlement for persons covered by the Veterans Reemployment Rights Act, including reservists and Guard members.

Mr. DASCHLE. Would you say that the number of cases are increasing, decreasing, remaining constant?

Mr. SHASTEEN. The number of cases involving reservists and Guard members has been increasing rather dramatically in relation, or in proportion to the total number of cases. The law, the basic law, provides protection for military personnel to return to their old jobs in civilian life. But today, the figures this year alone, in the cases that we have opened this year, 56 percent of those cases thus far this year have related to guardsmen, the protection of jobs and job status of guardsmen and reservists, as opposed to those who are coming home from a regular tour of military duty to return to their civilian jobs.

In 1977 it was only 31 percent; so you can see the increase. It has been gradually 2 or 3 or 5 percentage points a year all the way from 31 percent of our total cases up to this year thus far 56 percent involve members of the Reserve and the Guard.

Mr. DASCHLE. Does the Department have a program designed to inform employers of their responsibilities to Guard and Reserve members and the requirements of the law?

Mr. SHASTEEN. We endeavor to do that. Our principal responsibility is enforcement. The Department of Defense has had more activity in contacts with employers than has the Department of Labor. Our contact with employers comes when we receive a complaint, and we then endeavor to resolve that complaint by personal contact with that employer.

Mr. DASCHLE. I understand that you recently contacted State officials concerning what State laws currently exist with regard to dis-

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crimination against members of the Guard and Reserve. Could you share with us some of your findings? And would you also, as you answer that question, address whether all States currently prohibit employers from discriminating against members of the Guard and Reserves?

Mr. SHASTEEN. Yes, sir. In preparation for these hearings we researched State statutes for provisions prohibiting the hiring of reservists and members of the National Guard, prohibiting discrimination. And we contacted the State attorneys general to inquire as to their experience in enforcing such provisions. We found five State laws expressly forbid this kind of hiring discrimination: California, Michigan, Mississippi, North Carolina, and Ohio.

We wrote to the attorneys general of these five States. Mississippi Assistant Attorney General Richard Mitchell reported, and I quote, he reported that he was unaware of any complaints to this office concerning that section of the code. North Carolina reported that it has had no experience with its brandnew law which just went into effect October 1, 1985. Ohio and California reported that their provisions are criminal, not civil. And in those States the criminal laws are enforced by local prosecuting attorneys, not by the State attorney general. Therefore, the attorney general of each State had no information or experience under the law. Michigan's attorney general has not yet responded to our letter.

We sent a slightly different letter to the other 45 attorneys general asking each if his State had any provision prohibiting hiring discrimination against reservists and members of the Guard. As a result of the responses we received, we learned that New Jersey and Wyoming have such provisions. We also learned that Illinois, New Hampshire, and Virginia have laws that forbid hiring discrimination against Guard members, but not such discrimination against reservists. So they draw those lines in the three States of Illinois, New Hampshire and Virginia. These attorneys general stated that they had had very limited experience with these provisions.

We also asked attorneys general whether they were aware of complaints of hiring discrimination by reservists or members of the National Guard, whether they were aware of that. Delaware Deputy Attorney General Lawrence Cronin reported, and I quote: "After speaking with members of the National Guard in Delaware involved with the administration of personnel matters I have learned that discrimination in hiring by private companies toward members of the National Guard is prevalent in this State and has apparently forced many individuals to leave the National Guard in order to obtain full-time employment with private organizations." The attorney general of Wisconsin also reported hearing about some complaints of this nature.

The fact that most State attorneys general are not aware of complaints about hiring discrimination against reservists and members of the Guard doesn't mean that such discrimination is not occurring. Reserve component personnel are not generally aware of the relevant State laws and have no reason to communicate with the State attorney general.

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Mr. DASCHLE. Thank you, Mr. Shasteen. I am out of time. I may have some additional questions for you for the record that we will submit for answers in writing.

At this time I would ask Mr. McEwen if he has any questions.

Mr. MCEWEN. Thank you, Mr. Chairman. Mr. Shasteen, it is always a pleasure to see you. Thank you for coming.

When any type of discrimination is prohibited by law, it means very little if there is not effective enforcement, as you know. If H.R. 2798 were enacted, what specific enforcement mechanisms would be available in the Department of Labor, and what level priority would such enforcement efforts receive?

Mr. SHASTEEN. Well, we would certainly give a very high priority to this. We would combine it with the enforcement responsibilities we already have under the Veterans' Reemployment Rights Act. We have about 28 specialists in the field, specialists in this area; plus, as I mentioned earlier, more than 200 persons out there who receive telephone calls, who on a daily basis answer questions about this law, receive complaints and see that they get to the people who can do the onsite investigations. We very thoroughly investigate and intensively pursue any complaint. The total force policy is so important to this country that it is absolutely essential that we protect the jobs of guardsmen, the civilian jobs of guardsmen and reservists.

Within the past 3 months we have received quite a rash of complaints—they have come in to my personal attention—about discrimination against guardsmen and reservists in hiring. We had not heard a lot about that prior to the past year. In the past 3 months particularly there has been an increase.

Mr. MCEWEN. Thank you very much for your excellent service to Capitol Hill for so many years and now in your new position. I am so delighted you are there and thank you for your testimony.

Mr. SHASTEEN. Thank you very much, sir.

Mr. DASCHLE. Mr. Gray?

Mr. GRAY. No questions at this time, Mr. Chairman.

Mr. DASCHLE. Thank you. Thank you, Mr. Shasteen.

Our next witness is Col. Frank Rush, the Principal Director of the Office of Deputy Assistant Secretary of Defense for Reserve Affairs, Manpower and Personnel. He is accompanied by 2d Lt. Wayne Steinhilber of the District of Columbia National Guard.

Colonel Rush, we are pleased you could join us this afternoon. Lieutenant Steinhilber, thank you for coming. We would invite you to proceed in any way you see fit. The entire text of your statement will be printed in the record, and we are pleased that you could share some of your insight with us today. Thank you.

STATEMENT OF COL. FRANK RUSH, JR., USAF, PRINCIPAL DIRECTOR, OFFICE OF DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR RESERVE AFFAIRS, MANPOWER AND PERSONNEL, U.S. DEPARTMENT OF DEFENSE; ACCOMPANIED BY 2D LT. WAYNE STEINHILBER, DISTRICT OF COLUMBIA NATIONAL GUARD

Colonel RUSH. Thank you very much, Mr. Chairman. I will, with the longer statement in the record, just very briefly summarize the

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Department of Defense position on this very important bill, H.R. 2798, which the Department of Defense very strongly supports.

Chairman Montgomery has spelled out I think very succinctly the increasing dependence upon the Guard and Reserve within our total force. I would only add that the Guard and Reserve are a force in being, a force that has to be immediately ready to go. We don't count upon having additional training time before Guard and Reserve units can be deployed. And the importance of this fact is that Guard and Reserve training, and being able to make annual training and weekend drills, is all that much more important.

For that reason, discrimination or nonsupport by employers of Guard and Reserve, who after all are members of the local community and their full-time job is their civilian employment, is all that much more important. Because it will impact upon the propensity of people to join and continue to serve in our Guard and Reserve forces.

The only direct evidence of hiring discrimination, which is the subject today, is individual cases, and several of those are in the longer statement and Lieutenant Steinhilber will give you his own experiences today. But we think that we can infer from the general problems that guardsmen and reservists have with employment conflicts to what the problem is with hiring. We asked, in preparation for these hearings, The Rand Corp., which did an extensive survey in the Army National Guard and Reserve in 1979, to do a special analysis of that survey as it bears on conflicts between reservists and job obligations. Their analysis helps to illuminate the costs imposed on reservists by nonsupportive employers and the magnitude of the problem. We can infer that employers who are nonsupportive of current employees who are reservists may also discriminate in hiring.

The summary that Rand gave us is that between 10 and 20 percent of Guard and Reserve members have significant civilian employment-related problems and about one-third of those who leave do so because of employment conflicts. Now while the Rand field work was conducted in 1979, a survey in 1984 of 13,000 Guard and Reserve members in all components and a survey earlier this year of 4,000 came to very similar conclusions as the Rand study.

The employment protection programs administered by the Department of Labor provide equity for the individual reservist and show an enforcement presence that assists the Department of Defense in recruiting and in retaining reservists. We have worked closely with the Department of Labor in their programs. While all these statutory protections and an enforcement presence are a necessary foundation, our goal is the voluntary cooperation and support of employers. The National Committee for Employer Support of the Guard and Reserve was established for that purpose, to develop and promote an understanding of the National Guard and Reserve forces and their members among employers, and thus gain their support through personnel policies and practices that will encourage their employees' participation in Reserve programs.

The National Committee supports State-level employer support committees with over 3,000 influential members of the business and media communities throughout the country and in the District of Columbia, Puerto Rico, Virgin Islands, Guam, and Saipan. It is

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also responsible for public information programs, including television and radio spots directed at employers, supervisors, and the public to increase their understanding of the role of the Guard and Reserve members in the total force and the importance of time off for training.

An example of the importance of this effort was provided earlier this year when some 8,000 Wisconsin National Guard and Reserve members participated in the REFORGER logistical exercise in Europe. The 32d Separate Infantry Division of the Wisconsin Army National Guard was by far the largest Reserve forces unit that had ever participated in a REFORGER exercise. And during that exercise 31 corporate, civic and media leaders from Wisconsin were flown to West Germany in a Wisconsin Air National Guard KC-135E. They visited the guardsmen in the field and received numerous briefings from senior commanders. Many members of the group took the time to write to Assistant Secretary Webb concerning their reactions, and I might quote one of those:

"Quite frankly, I did not appreciate the essential role of the Guard and Reserve in assuring peace in the free world. I do now, and will relate the message whenever I can.'

We have similar so-called Boss-Lift programs throughout the country on a smaller scale. Another National Committee program, the Ombudsman Program, was established specifically to provide information on legal protections for reservists and Reserve employee responsibilities and to informally resolve problems that arise. It has been very successful in resolving hundreds of cases and in promoting understanding.

In summary, while the majority of our National Guard and Reserve members have jobs with employers who support their participation, 10 to 20 percent have significant employment-related difficulties. This is a major cause in one-third of our losses. The voluntary support of employers is our objective, but individual guardsmen and reservists must be able to count upon adequate protection in law if their job chances or employment benefits are threatened or reduced because of their Reserve service.

Mr. Chairman, I thank you again for the opportunity to present the views of the Department of Defense, and I will be happy to answer any questions you may have.

Mr. DASCHLE. Thank you, Colonel Rush.

[The prepared statement of Col. Rush appears on p. 40.]

Mr. DASCHLE. Lieutenant Steinhilber, did you have any comments?

Lieutenant STEINHILBER. Sir, just to give you my background, I have been a member of the military reserve forces since 1979. I have 3 years' service with the U.S. Marine Corps Reserves in California, receiving an honorable discharge in 1983 to enter the U.S. Army ROTC program as a scholarship student. I received my commission as a second lieutenant from the University of Southern California in January of 1985.

My current military assignment is that of platoon leader with the 273d Military Police Company in the District of Columbia National Guard. In my civilian occupation, I am a customer service representative with Chevy Chase Savings and Loan of Maryland.

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I understand I have been asked here today to relate some of my job search experiences as a member of the Guard and Reserve, and I would be happy to answer any questions you or committee members may have.

Mr. DASCHLE. Thank you, Mr. Steinhilber.

The bells indicate that we are going into a recess over on the floor, so we can proceed, obviously, until such time as we may be called back.

I want to thank both of you for coming this afternoon. I have a couple of questions relating to some of the comments made, and certainly to your experiences, Lieutenant Steinhilber. Obviously there is an expansion going on with regard to both the Reserves and the National Guard. I think the indication yesterday of the great support in the House for that expansion was well evidenced by the overwhelming vote for the Montgomery amendment. If that is the case, if indeed we are expanding, what expectation do you have for the chances of increased discrimination under these circumstances?

Colonel RUSH. I think that my analysis of what has happened over the years for which we have some sort of survey or other data indicates that it is a continuing problem. It is a continuing problem of a magnitude that we need both the law and the programs within both Labor and Defense to work with. I wouldn't predict that it would be any growing problem as long as we have got the tools and as long as we can get to the members and get to the employers and work carefully with them.

Mr. DASCHLE. On page 8 of your written statement you indicated that between 10 and 20 percent of the Guard and Reserve members have a significant problem with employers and that 30 percent of a group of reservists surveyed reported that their unit drills conflicted with civilian jobs. Has any analysis been done to identify nonsupportive employers?

Colonel RUSH. In reviewing the cases that the National Committee's ombudsman maintains, their geographical spread of cases, there is no particular trend. But there is a trend into certain types of jobs, particularly those that involve continuous operation so that the employees are on schedules, where they have a 7 day a week continuous operation, and those that are in public health and safety programs and smaller employers are where some of the more significant problems are.

Mr. DASCHLE. Are efforts now underway to minimize the hardships on employers who employ reservists and guardsmen? If so, what kind of efforts would those be?

Colonel RUSH. We try to encourage Reserve commanders to get their training schedules out as early as they can and encourage the members to give their employers as much notice of those training schedules as they can. That certainly happens. It also certainly is not 100-percent effective.

Also, we have been working very close with the National Committee and with the Department of Labor to identify specific cases where individual guardsmen or reservists may actually abuse the protections that they now have in law, and work with the Reserve components to eliminate that type of abuse by individual members.

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Mr. DASCHLE. Lieutenant Steinhilber, I may have, with the bells, cut you off prematurely. You may not have finished your initial statement. Did you have anything else you wanted to share prior to the time we ask you some questions?

Lieutenant STEINHILBER. I would like to relate a personal experience I think is representative of the type of problems that reservists meet when they are seeking employment.

When I first moved to Maryland, after completing my officer basic course in February, I answered a classified ad from a major Washington supermarket chain for part-time employment. I went to the store, which is 2 blocks from my apartment, saw the store manager, obtained an application and filled it out, and was interviewed. On the application, as many job applications do, they requested my current military status as it related to the Reserves. I noted that I was a national guardsman. I turned in the application, was interviewed, and was told that I would hear something very shortly. I did not, and the ads in the paper continued.

Two weeks later another ad appeared, stating that a mobile recruitment team would be at the same store interviewing again. I made an appointment. I went to the team, filled out another application and was interviewed. It was a computerized form. Along with asking about my military Reserve status I was asked if there were any days which I would be unavailable to work, so I was noting that I would need 1 weekend off per month along with the 2 weeks in the summer for my annual training.

I was interviewed and told that my qualifications were very good. They asked what the requirements of the National Guard were, what was the mission, which I explained to them. They said everything seemed in order. I was told that my application would be forwarded to personnel and I would be hearing from someone in several days.

Again, I heard nothing. I made two calls to the personnel office requesting the status of my application and was told that I was still being considered. Now during this time the ads in the paper were still continuing.

About 2 weeks later, a large ad appeared in the business section of a local paper advertising for entry level management positions with the supermarket chain and that a career fair would be held at a local hotel. I attended, filled out the application and was told the following: I see by your application you are in the National Guard. What do they do? I explained the mission of the Guard and was told that I would be needing 1 weekend off per month and the 2 weeks per summer and I would be able to provide those dates to them, if hired, 1 full year in advance. I was told that my qualifications were "excellent" and I would be well-suited for the position. And, "All that remains now is to find a store manager that will accept your position of being in the National Guard." This by no means was the first time.

When I had first entered the Marine Corps Reserves, and I was still at school at that time and trying to find part-time employment, I applied to a large retail store in California, and they told me that "your Reserve duties would be creating a conflict" and along with the security job. And at that time I did not know of

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there being any remedy or course of action that one could follow for that.

Mr. DASCHLE. Mr. Steinhilber, was this in the District or in Maryland or Virginia?

Lieutenant STEINHILBER. What was this, sir?

Mr. DASCHLE. Were most of your experiences in the District of Columbia?

Lieutenant STEINHILBER. As far as with the supermarket chain, it was here in Maryland. As far as the retail and the security jobs, I have only been in the State since February. The other ones took place in California.

Mr. DASCHLE. In all cases, apparently you have no State recourse——

Lieutenant STEINHILBER. No. I meant back at the time when I was back in California. It was, I believe, about 1980 when I applied for a security job and they had said, well, this was going great. And I called the Veterans' Affairs and they said that basically the only thing you could do, we see if people that are already employed but there is really nothing that we can do. If you want to basically go and get a lawyer or to take it up with your Congressman or something, but they were unable to inform me of any action that I could take to remedy the situation.

Mr. DASCHLE. Colonel Rush, I thought you mentioned California as one of those States that had a law that prohibits that kind of discrimination. Lieutenant Steinhilber apparently was not able to utilize whatever benefits come from that law. Do the laws have little teeth? Do they not apply in situations such as his? Why would not the State law have any effect in this case?

Colonel RUSH. As Secretary Shasteen mentioned——

Mr. DASCHLE. Oh, excuse me. I am sorry.

Colonel RUSH. What I was going to say, sir, is that while they did the survey of the States, we at the same time talked to Reserve and Guard organizations in the various States to see what their experience was with the operation of those laws. In California, we talked with an officer from the California Adjutant General's office. He said there was a law on the book, but that, as I recall, it was a law that was enforced by local law enforcement people and they, in fact, had very little experience with it and it was not terribly workable.

Mr. DASCHLE. Lieutenant Steinhilber, if this kind of difficulty and discrimination continues, do you think some of your colleagues in the National Guard today or the Reserves would leave the Guard or Reserves? It seems to me that would be a mighty powerful motivation for many people simply to give up the National Guard or the Reserves. Do you think that would result?

Lieutenant STEINHILBER. Certainly, sir. As a platoon leader, I would be, basically, the first person in the chain of command that troops would be talking to, the enlisted troops would contact regarding, or if they were having problems with their employers. It comes down to, basically, a matter of economics. Certainly your Reserve pay is not going to raise a family and put food on the table.

I would like to relate one particular experience from a classmate at my officer basic course, a lieutenant, who got married just before entering his officer basic course. He had been enlisted in the

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Reserves prior, was trained in communications, a very critical job for the Reserves. He needed more money, and he applied for a position with the medium-sized Metropolitan Birmingham Police Department. He met all the requirements, and was told by the chief of police that in order for him to get the job he would have to go inactive. Needless to say, after completing his officer basic course he went inactive and now has the job.

This is something that you can't blame the reservist. It is basically something that if it is going to come down to the job or the Guard, unfortunately it is going to be that they are going to be taking the position with the civilian employer. And there would be a reluctance, I think, by some reservists to make a complaint because of worrying what that then would do to their position in the company. If they were finally hired or if they were currently employed, what that would do to their career pattern.

Mr. DASCHLE. Well, I think that is outrageous. I think the incentives that we try to build into programs such as the new GI bill, and other programs designed to encourage active participation in the National Guard and Reserves are completely countered, and probably very effectively countered, by discrimination, as we see in your case and the cases that Colonel Rush is indicating. Your testimony, probably better than any other testimony that I have heard yet, amply demonstrates why we have to have this legislation. You have done our subcommittee a real service by sharing your experiences with us this afternoon, and I am grateful to you.

Mr. McEwen?

Mr. MCEWEN. Thank you, Mr. Chairman.

Along that same line, Colonel, we, as Members of Congress, do public service announcements on a regular basis, against drunk driving or for missing children, or whatever. Who could help us put together a 60-second spot with a little background as to what the National Guard and Reserves do for America. It would be directed at private employers, because they are who we are talking about, basically the vast majority of people who hire anywhere from 3 to 12 employees, and it would congratulate them or encourage them to make their contribution to the security of America by permitting their employees to serve their country 2 days a month? Is that something that your department could participate in?

Colonel RUSH. It is my understanding that the National Committee's public service advertising program, in which we get help from a major advertising agency and the National Ad Council, would be able to do something like that. And they do have, and perhaps you have seen, the various television spots or radio spots that they have on the importance of the Guard and Reserves.

Mr. MCEWEN. So you are saying you don't do anything like that. You would go to what, the National Ad Council? We often do them ourselves. We do them with our local TV stations, where they play them a lot. I am sure the National Ad Council has lots of those things in the can that is pulled out at 6 in the morning or something. But if a local Congressman were to do it, chances are it would be played a lot more.

Is there any way that you can help us with that or not?

Colonel RUSH. Let me look into that, sir. Because as I said, the National Committee for Employer Support of the Guard and Re-

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serve, which comes under Mr. Webb's office, is involved in that and I believe that they might very well be able to help.

Mr. MCEWEN. Good. That is what I wanted to ask about, because you and others have mentioned that the discrimination against the National Guard and Reserves members is difficult to document. So tell me a little bit more about the National Committee for Employer Support of the Guard and Reserve. Do they maintain records documenting discrimination?

Colonel RUSH. They do. Since 1974 they have had an ombudsman program. There is an ombudsman in the National Committee headquarters here in Roslyn, and in most States one or more members of the State committees that work ombudsman issues on relations between National Guard and Reserve members as employees and employers. For the cases that are referred to the national ombudsman, they have for the last several years kept a record by component, by State, and by the type of complaint that they handle. So we have a record of several thousand cases over the last few years.

Mr. MCEWEN. We need to actually get some of that to augment our position, I would presume.

Colonel RUSH. Yes, sir.

Mr. MCEWEN. So we need to contact them.

Colonel RUSH. We would be pleased to furnish it.

Mr. MCEWEN. Will you see to it that DOD will do everything they can to make people aware of these changes if we enact this bill? Does that come under your jurisdiction?

Colonel RUSH. In terms of these changes I think it would be important for both the Department of Defense and the Department of Labor to get the word out and to be able to explain and make sure that the word, in terms of what the protections are, and what the responsibilities of the reservist as an employee is, which is also important, that that gets out to the member.

Now the Department of the Army has done a great deal in the last year along that line. The summer of 1985 issue of the Army Reserve magazine and recent publications from Army Forces Command under which the Guard and Reserve units come in terms of the command structure have gone out with detailed information on employment rights and employment protection issues. And we are moving to do a better job in that area.

Mr. MCEWEN. Are you going to help me find out how we can go about making some public service spots?

Colonel RUSH. Yes, sir.

Mr. MCEWEN. You will find out who we should talk to and where we can get some background footage to fade in and out and all that; right? I am sure the Department of Defense has that.

Now who do I talk to if a Member of Congress has an Air Reserve unit that dive bombs his hometown and blows out all the windows with the sonic booms and scares the children and animals?

Colonel RUSH. There is usually a public affairs officer from the Air Force Reserve, from the local Air Reserve unit that is standing by ready to answer those questions. And they do get a few.

Mr. MCEWEN. What if the Reserve unit has done that for 5 years; they have split the walls, and china is falling, and children have been petrified? What is the next level that you can pursue,

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after you have written the public affairs officer and he writes you a letter back and you distribute it to the local newspaper and say, look, I did my best?

Colonel RUSH. That is a good question.

Mr. GRAY. Would the gentleman yield?

Mr. MCEWEN. I don't have anyone in particular in mind here. This is just a spontaneous inquiry on my part.

I yield to the gentleman.

Mr. GRAY. In our State, my opponent is a pilot in the Illinois Air National Guard. I wouldn't be surprised if that happened in my district. But in Illinois you would go to the Adjutant General, the State Adjutant General, and I assume you have one in Ohio.

Mr. MCEWEN. I am privileged to live right in the middle of the restricted zone where they practice every weekend.

Thank you very much.

Mr. DASCHLE. Mr. Gray?

Mr. GRAY. Well, thank you, Mr. Chairman. I just have one quick question.

Present law, Colonel, prohibits an employer from discharging an employee who is in the Guard or the Reserve. Do you have any correspondence or any word of anyone who has actually been fired for allegedly other reasons when in fact it was because of membership in the Guard? Has been discharged for that reason but knowing that the law prohibits it. Do you know of any guardsmen or reservists who have actually been dismissed from a charge when the employer has used an excuse instead of reason, discharged him for incompetence or anything else? Do you have any complaints along those lines?

Colonel RUSH. That, of course, is always very hard to follow because, as in other types of employment discrimination cases, you can always say that it was tardiness or incompetence or something other than what the real reason for the discharge was.

Mr. GRAY. I just wondered if you or the lieutenant had heard of any cases along those lines because I have in my district.

Colonel RUSH. I am sure there are. I don't have examples of that specific type.

Mr. GRAY. The reason I mentioned it was alluding to my good friend from Ohio's commentary about getting the word out. I think this type of thing, public dissemination of just how active and how important the Guard and Reserves are to our total defense picture, in fact—are these figures about accurate, that our combat readiness is composed of about 50 percent Guard and reservists? Fifty percent of our total combat readiness depends upon the Guard and the Reserves, is that an accurate percentage?

Colonel RUSH. I would say overall that, for example, in the Army by the end of fiscal year 1987 their combat units, 51 percent will be in the National Guard, Army Guard, and in the Army Reserve.

Mr. GRAY. You wouldn't call me a liar for 1 percent, would you?

Colonel RUSH. No, sir. But I guess my point was that in some places, like in the Air Defense, it is three-quarters.

Mr. GRAY. Well, that is the point that I wanted to make concerning my friend from Ohio; is that I think a good public dissemination effort in addition to legislation. I know that the present law is being abused in some instances in my district. I know of three

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guardsmen who were dismissed in the West Frankford National Guard by employers on the grounds of other reasons when I know in fact it was their going to camp up in Wisconsin and other places and taking off 2 weeks. One of the employers told me he couldn't afford to have that employee gone for that period of time.

So I think it is something that we need to look into because you know a pancake never gets so flat but what it has two sides. And I think the other side of this legislation is that there is discrimination now even though the law prohibits it. So I think a good education program as to how valuable the reservists and Guard is to our national defense posture is something we ought to be considering along the lines of the gentleman from Ohio.

Colonel RUSH. Yes, sir. I agree.

Mr. GRAY. Thank you, Mr. Chairman.

Mr. DASCHLE. Thank you, Mr. Gray.

The pearl of wisdom that a pancake never gets so flat as it doesn't have two sides is one that will haunt me for a long time. I kind of like that one.

Mr. McEwen has some additional questions.

Mr. MCEWEN. Colonel, while you are here I want to take full advantage of your expertise. Who decides where the F-16's go and which State gets them?

Colonel RUSH. That is a question——

Mr. MCEWEN. I am sure there is a committee in the Defense Department.

Colonel RUSH. There likely is. But that one is beyond my expertise, sir.

Mr. MCEWEN. All right. Thank you much.

Mr. DASCHLE. Well, Lieutenant Steinhilber and Colonel Rush, we want to thank you very much for coming. We have been enlightened by your experience, and we are grateful for that. Sometimes it is that kind of experience and that kind of testimony that enlightens us far more than whatever statistical evidence we may be provided, and you have done us a real service. We thank you both.

Mr. DASCHLE. I want to recognize, even though he is not a witness this afternoon, Mr. Dennis Kenneally. Dennis Kenneally is the Deputy Assistant Secretary of the Air Force for Reserve Affairs. He has had a tremendous interest in all of these issues and employer support. We are very grateful to you for coming this afternoon.

Mr. MCEWEN. Mr. Chairman?

Mr. DASCHLE. Yes.

Mr. MCEWEN. Is Mr. Kenneally the one that decides which State gets the F-16's?

[Laughter.]

Mr. KENNEALLY. No, sir, I am not, but I would be happy to discuss who is.

Mr. MCEWEN. Thank you. Thank you very much.

Mr. DASCHLE. I knew you would be glad you came this afternoon.

[Laughter.]

Mr. DASCHLE. Our next panel of witnesses includes Lt. Gen. LaVern Weber, the Executive Director of the National Guard Association; Col. C. Judson Lively, the Acting Executive Director, Reserve Officers Association; Chief Alan Obermiller, the Executive

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Director, the Enlisted Association of the National Guard of the United States; Capt. Charles Buesener, the Director of Legislation, the Naval Reserve Association.

Gentlemen, we are glad you are here. Thank you for coming and sharing your insights with us on this issue.

I think we will start in order of rank. We are grateful, General Weber, for your presence this afternoon. Please proceed in any way that you see fit.

STATEMENTS OF LT. GEN. LVERN E. WEBER (RETIRED), EXECUTIVE DIRECTOR, NATIONAL GUARD ASSOCIATION OF THE UNITED STATES; COL. C. JUDSON LIVELY (RETIRED), ACTING EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES; CHIEF ALAN D. OBERMILLER (RETIRED), EXECUTIVE DIRECTOR, ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE UNITED STATES; CAPT. CHARLES A. BUESENER (RETIRED), DIRECTOR OF LEGISLATION, NAVAL RESERVE ASSOCIATION

General WEBER. Thank you, Mr. Chairman.

Members of the committee, we at the Guard Association are most appreciative of the opportunity to come and discuss this most vital issue with you here today.

I have submitted to you a long statement and, with your permission to enter that into the record, I would like to talk extemporaneously, if I may.

Mr. DASCHLE. Without objection, it will be entered into the record.

General WEBER. Let me state at the outset that we throughout the Guard family are most appreciative to the Congress, and this committee in particular, for all that you have done, the good legislation that you have passed over the years in our behalf. That covers not only the legislation dealing with programs, but funds as well, and more recently with what each of you contributed to in a very positive way in the vote yesterday. We are very grateful for that.

Much has been said here today about the total force policy, and I would state for our Association that we wholeheartedly support the total force policy and all of its ramifications, all of the tremendous demands that it places on the members of the Guard, the Guard families and the employers—the three people elements that I consider vital as we look to an effective National Guard unit. The first being the individual member of the Guard himself or herself; secondly, that individual's family; and thirdly, the employer.

As we talk to the individual, the House Armed Services Committee, and indeed the entire Congress, has been very helpful to us in dealing with getting high-quality individuals as members of the Army and the Air National Guard. We are grateful for that. The new GI bill which has been in operation for a little less than a year has shown to be a tremendous vehicle to assist in getting high-quality individuals in the Guard. It is absolutely essential that we retain that piece of legislation.

You have likewise done a great job in equipping the Guard so that our members in the Army and the Air Guard have good equip-

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ment with which to work. You have provided moneys and opportunities for them to get the very best training. You have provided full-time personnel. Each of these four ingredients are most important as we talk about the individual soldier or airman.

Turning to the family, likewise you have been very helpful to us in addressing the issue of the family. We probably need some additional work in the area of survivors' benefits. We at the Association have a study group that is looking into that issue and we will be forthcoming with some recommendations if any are deemed appropriate. The commissary issue is one that our members feel very strongly about. We think that revised eligibility regulations would be very helpful in dealing with the issue of the family.

The area that we probably need the greatest amount of help is dealing with the employer. Let me hasten to say that we are not anti employer. Without the good-quality employers that we have out there, we certainly could not have the good employees as members of the Guard and Reserve. We are very supportive of the employers.

Many of our units have active programs with employers and firms wherein they work very closely in getting individuals, employed individuals, into the Guard or Reserve, send them off to training school, and they come back with a skill that is adaptable to that employer or the firm. And this has worked very, very well in many instances.

But we feel that we need to help the employer, possibly through a tax incentive program. We are aware that such a bill has been introduced. We likewise at the Association have a group of individuals looking into that to see what the consensus is from the field as to what would be most helpful in dealing with an incentive to employers for employees to become members of the Army and Air National Guard.

I would like to digress a bit and deal with an issue, or a question that was asked of an earlier witness, and that had to do with the trend. I would suggest to you that our trend has been dictated very much by the activity rate in which our members of the Guard have to perform their military duties, as we go from 2 to 3 weeks of annual training as an example, as we have additional training requirements for the individuals to maintain their specific skills in their Army or Air Guard unit. So the activity rate is a big influence and we can see that only on the increase.

With the red light on, I will cease there and be prepared to address any questions that the committee may have. Thank you again for the opportunity.

Mr. DASCHLE. Thank you, General Weber. That is not bad for extemporaneous remarks.

[Laughter.]

[The prepared statement of General Weber appears on p. 54.]

Mr. DASCHLE. Colonel Lively.

STATEMENT OF COL. C. JUDSON LIVELY

Colonel LIVELY. Thank you, Mr. Chairman, and members of the committee. The Reserve Officers Association appreciates very much the opportunity to be with you today. Before I get into talking

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about this specific legislation, I do want to say how much it has meant, the support this committee has given to the GI bill, out in the field, and we can't let that ball drop this year.

I think it is particularly appropriate that the committee at this time be looking at the subject of discrimination in Reserve and Guard hiring because with the budget crunches that are going on there has been a shifting of missions to the Reserve components and hiring discrimination against reservists and members of the Guard is going to undermine the ability of this total force aspect to attract and retain the type of people that we need, which, in turn, will have a resultant impact on budgetary costs for the defense of our Nation. So it is very timely that you would be taking this up.

As has been mentioned earlier, within DOD there is the Office of the Assistant Secretary Defense for Reserve Affairs who does a good job in publicizing and educating regarding the Reserve and Guard protections. The same thing is true for the National Committee for Employer Support. But education by itself isn't going to do the job. You need the legislative teeth that you are looking at today, and we certainly hope that this will come into being. We have received calls from reservists and Guard members who allege they have been discriminated against in the employment process. This is hard to really identify. If a person puts down on an employment application, and many of them do ask for information on whether you are a member of the Guard or Reserve, it is easy to find another reason not to hire them. As you know, title 38 does not provide any protection in this area.

The initiatives that Mr. Montgomery referred to earlier, including this one, we all participated in the forming of those and we support them. This is one of the keystones of that aspect. We recognize that employers are called upon to make sacrifices because of the increasing tempo of the use of the Reserve and Guard, but we believe that there is also another side to that. The same spirit of duty and dedication that makes an individual a successful reservist we believe also will contribute to helping him to be a better employee and better able to contribute to his company. So we would like to see them not be denied employment opportunities because of their Reserve and Guard affiliation.

The tax incentive legislation, hopefully some day it will be in an economic situtation where that can also become part of the package. We applaud this committee for its efforts in this regard, we support what you are doing, and we hope we can get on with the show.

Thank you, Mr. Chairman.

Mr. DASCHLE. Thank you, Colonel Lively.

[The prepared statement of Colonel Lively appears on p. 61.]

Mr. DASCHLE. Chief Obermiller.

STATEMENT OF ALAN D. OBERMILLER

Mr. OBERMILLER. Mr. Chairman, distinguished members of the committee, on behalf of over 50,000 members of the Enlisted Association of the National Guard of the United States, I appreciate this opportunity to testify in support of H.R. 2798, a bill which prohibits discrimination in employment of members of the National Guard and Reserve.

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We strongly urge passage of this legislation, although we regret the necessity of having to look to legislation to accomplish what we view as a patriotic duty for the welfare of the Nation.

Nevertheless, H.R. 2798 is necessary to ensure the continued growth and effectiveness of the Reserve components into the 1990's. The practicalities of today's world make it necessary to tighten the protection of citizen soldiers voluntarily serving in the Reserve forces of our country. This legislation would broaden the protection to new hires and rehires in civilian employment. We need this additional assurance that individuals will not suffer penalties for Reserve military service.

The enlisted force is the largest part of the Reserve structure and represents the greatest risk to readiness if discrimination in employment because of military service becomes a way of life. Enlisted members especially need the protection in this regard because the majority find first employment in the blue collar fields where employment opportunities are limited and highly competitive, and, once secured, depend upon seniority for job progression.

Then, too, the number of young Americans available for military service, those between the ages of 17 and 21, is in decline, and it is projected to continue into the foreseeable future. This trend will put Reserve recruiting efforts in direct competition with the private sector and the regular services for these same individuals. If the Reserve components are to successfully compete for a share of these resources, we must ensure that the individual who agrees to a military commitment does not suffer penalties as a result of that decision. Job protection is first and foremost among these assurances.

As the pool of nonprior service individuals declines, we must increase our efforts to retain our experienced soldiers and airmen. They, too, will need the protection of H.R. 2798 as they juggle career moves necessary to ensure family financial security while performing military service. If, at any time, employment discrimination because of Reserve military service becomes popular in our society, we will lose the longevity and experience that has made the National Guard an equal, respected, tested and cost-effective partner in national defense.

Members of the Selected Reserve, volunteers all, are special people, people with a strong sense of patriotism and duty to country and their fellow man. But we must not make the mistake of assuming that there is no limit to their dedication. As pressures increase for greater participation in exercises and training scenarios, equal and opposite pressure is exerted on the individual by his family and employer to abandon his commitment to national security.

The realities of our personal lives are such that these pressures become harder and harder to resist. The Annual Report of the Reserve Forces Policy Board for Fiscal Year 1985 states, and I quote: "Family and employer conflicts continue as the most significant factors causing personnel to terminate their services in the Reserve Components." Add to this employment discrimination and we have the potential for serious problems in readiness.

We believe that H.R. 2798 is necessary insurance that the individual who serves as a citizen soldier will not be penalized for serv-

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ing the country. We also understand the burden placed on the employer of these members and strongly support a tax savings initiative to compensate employers for supporting Guard and Reserve membership. These programs and continuation of the new GI bill will put in place dependable incentives that should help support adequate Reserve membership into the 1990's.

We are grateful to Congressman Montgomery and this committee for offering this protection for our members and strongly recommend its adoption into law. It is a strong and positive statement in support of the Reserve forces.

Mr. Chairman, I again wish to thank you and the committee on behalf of our membership and all members of the Reserve components for this opportunity to comment and express our views on this most important piece of legislation. I will be happy to answer any questions that you may have.

Mr. DASCHLE. Thank you, Chief Obermiller.

[The prepared statement of Chief Obermiller appears on p. 65.]

Mr. DASCHLE. Captain Buesener.

STATEMENT OF CAPT. CHARLES A. BUESENER

Captain BUESENER. Thank you very much for this opportunity to come before you and represent the Naval Reserve Association. I particularly view this as an opportunity to express some of my own views gained over 30 years of active duty, the last of which might be pertinent to this committee in that I was commanding officer of the largest Naval Reserve air station in the system at Willow Grove, PA; and, consequently, for the last 2½ years of my career I dealt with 5,000 or 6,000 drilling reservists on a continuing basis.

I view this piece of legislation as most necessary today, much more so than in the past, because it basically is an attempt to update some of the archaic rules and body of regulation that were sufficient to govern the Reserve interface with their civilian community in the past when the concept of utilization and the capability of the Reserves was also equally archaic. The fact of the matter now, and particularly in the Naval Air Reserve is that the Reserve forces are, in fact, being utilized on a daily basis. Some little known incidents might tend to illustrate this fact.

The primary recovery ship for the *Challenger* mission is a Reserve ship. The marines that were evacuated from Lebanon after the explosion there were evacuated to Germany by Naval Air Reserve transport airplanes. As part of my base at Willow Grove, I had two fully equipped antisubmarine long-range patrol aircraft squadrons. Each one of those squadrons represented to the taxpayer roughly a half billion dollar investment in aircraft and support equippage. These aircraft were gone continually throughout the year. Illustrative of this, one morning I went out, and it sticks in my mind because you are used to seeing *x* amount of things lined up when you are a military commander. I guess that is part of the mindset. But I saw a lot of aircraft tails that were supposed to be there that weren't there. There were eight airplanes missing on a Tuesday morning in the middle of October, and I tracked down where they were. There were two in Iceland. There was one in Sigonella. There was one in Panama. There were two on the West

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Coast. And two others were in transit. If that doesn't add up to eight, I missed a couple of transit airplanes. The point I am trying to illustrate here is that those forces were, in fact, operating in an operational tasking mode to fulfill an active force mission requirement in containment and surveillance of Russian submarines off our coast and in our areas of national interest. This is illustrative in my mind of the changes that have occured in the philosophy of the Reserves. We have to make sure that our most valued asset in this equation, the people that man these airplanes, the people that bring some--in the case of our ASW—200 years of ASW experience to a single aircraft, compared to maybe 52 in a comparable active force aircraft are provided adequate job protection. We have to maintain their job stability so that they can continue to give this expertise back to us. It is well worth any effort to make sure that the motivation is there both on their part and on the part of their employer to have them to continue to participate.

In dealing with the issue as a commanding officer I would have several comments to make. No. 1, it is a two-sided pancake, and we have to be particularly conscious of how we utilize the Reserves, particularly the impact on the enlisted reservist who is employed by a relatively small-size corporation that can ill afford to lose a trained worker and, in fact, it is possible that such losses at a critical business time can literally shut down a small business from a productivity standpoint if we—I wouldn't want to say abuse, but if we overutilize the Reserves in an operational capacity.

The second point I would like to make is the fact that we don't do as good a job as we can do on selling what attributes the Reserve member provides to an employer. Where else can you be assured in this society that you have a drug and abused substance free pool of employees? Only in the Reserves and the Activity Duty components. Where else can you get the Government to directly provide job-related productivity increase skills at no cost to the employer? In many cases only in the Reserves. The airlines are very smart about this. They love to have their junior pilots fly in the Reserves because they—and I am allowed to say this because I am an able aviator—they hone their monkey skills, moving back and forth kicking the rudders, at a much cheaper price to American Airlines than American can do it itself.

I think we have to emphasize this aspect of the positive effects of membership in the Reserves, and I think we can do a much better job than we have in the past. I would like to see more employer invitations to get involved in and even see what is going on. Many of them don't have any idea of the complexity of the job that the reservist performs in its military capacity and their eyes are opened appreciably. In many cases the employer doesn't even know he had that talent sitting down on that production floor. This employer exposure helps the Reserves in terms of promotion and job stability.

I see the red light and I will be glad to answer any questions. Thank you.

[The prepared statement of Captain Pat R. Lucci, USNR (Retired), national president, Naval Reserve Association, appears on p. 72.]

Mr. Evans [presiding]. Captain, thank you.

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I have taken the place of the chairman so that the hearing can continue during a vote. I have some questions the chairman asked me to ask.

General Weber, I know that we don't have any hard data on discrimination during the initial hiring process, but do you have a sense of the severity of the problem? And would you expect this situation to worsen as the role of the Reserve components is expanded?

General WEBER. To answer the first part of your question, sir, no, we do not have hard data. We don't have a process within the Association to keep such statistics. On do I anticipate continuation, again I would refer to an earlier comment. That I would anticipate that the activity levels will increase as missions are expanded. As activity levels increase, so the conflict with employment would increase as well.

Mr. EVANS. Has your organization done any employer outreach on a national or local level in order to familiarize employers with the importance of their support for the Guard and Reserves?

General WEBER. The National Guard Association of the United States works very closely with our National Committee for Employer Support to the Guard and Reserve. We do that working through the various State organizations, the Adjutant General's Office, as well as the local or the State committees. The coordination is not as detailed as it should be. We make every effort as we participate in various conferences and organizational meetings held within the Guard to have representatives on the National Committee for Employer Support present and to ensure they have an opportunity to speak with the commanders of the Guard units.

I think that this is an area wherein we have some very, very active chapters, or States that would have worked the problem very effectively. We have others that are not quite so effective. I think that our National Committee needs some additional support, some additional manning to give them a greater capability to deal with the problems that arise in the State.

The ombudsman program was mentioned earlier. That is very good but it has a limitation in that to resolve these problems it takes a face-to-face—not a confrontation, but a face-to-face meeting between the two adversaries, or the two individuals with problems, and I think we need additional support at the national level.

Mr. EVANS. All right. Thank you.

Colonel, has it been the observation of your organization that complaints regarding reemployment rights are increasing as the Guard and Reserve are expanded? I think that the degree to which employers support reemployment rights may give us an idea of the support we can expect regarding initial hiring protection. Is that your opinion as well?

Colonel LIVELY. When individuals contact the Reserve Officers Association regarding reemployment problems, we channel them to the Employer Support for the Guard and Reserve. We are not staffed to get in the legal side of that and the Employer Support for the Guard and Reserve gives us good support, gives our members good support that way.

I, personally, have not noticed a significant increase in reemployment problems over the last few years, that has come to my atten-

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tion. But they would be in a better position to state whether there has been an up-ramp in that regard.

Mr. EVANS. In your statement you indicate that your organization has several job application forms which request information pertaining to participation in the Reserve and the Guard. Has the ROA made any effort to contact these employers and explain the importance of service in the Guard and the Reserve?

Colonel LIVELY. Not these employers, per se, through an organized program. We do have video tape presentations for use out in the chapter-level presentation to Kiwanis, to Rotary Clubs, Jaycees, things like that, which emphasize the importance of the Guard and the Reserve to our defense posture and the importance within the community. And we are preparing a new one at the present time, and we are working on it, "The Faces of Freedom," which will reenforce the importance.

Mr. EVANS. Is it your view that discrimination in employment because of service affiliation is a widespread problem?

Colonel LIVELY. I would say that it is a significant problem that requires the approach the committee is taking, the legislation, and, hopefully, later on the carrot to go with the stick.

Mr. EVANS. Chief, if a member of a Reserve component is faced with making a choice between accepting a desirable job or terminating his Reserve participation, what choice is a service member likely to make?

Mr. OBERMILLER. It is pretty obvious that the first importance to anybody in America today is putting food on the table and pursuing career progression. I think it is self-evident that he would get out of the Guard. Yes, sir.

Mr. EVANS. So we are trying to make it possible that they don't have to make such a choice. Will the enactment of H.R. 2798 ensure that these citizen soldiers will not be forced to make this kind of decision?

Mr. OBERMILLER. We believe that the value of the bill is that it would make a straight, strong, positive statement that it is the intent that the Guard and Reserve are necessary to the country, that the Congress supports membership in the Guard and Reserve. We look at it as a preventive measure, more than a punitive one. But we think that is the type of statement that needs to be made.

Mr. EVANS. Okay. Thank you.

Captain, you noted that the extensive training that can be required for complex and expensive weapons systems training possibly last from 3 to 6 months. Could this training requirement result in discrimination against a reservist or Guard member in employment?

Captain BUESENER. In my view it certainly can, and in fact, it has in the past. The form of discrimination is sometimes difficult to identify in that it doesn't result in a direct act of firing. Its impact is felt by the drilling reservist by not being promoted, by not being made available as a "company first" guy that will go anyplace, do anything, accomplish anything anytime at the whim of the company because he is unable to do that. The fact of the matter is that in my view whatever data is generated is the tip of the iceberg of the reality that exists out there. Because the individual reservist can win the battle and lose the war, and that is why I would make

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a comment that whatever legislation is passed the punitive side doesn't have to be severe, but it has to be swift if it is going to have any deterrent factor or any incentive factor for the reservist to get his back up.

If we are looking at an enforcement system that takes 7 months, 8 months, 5 years, 10 years to come to fruition, I am afraid we are talking and we are in a sense bluffing with a good poker hand. But we are going to have to produce. And if we produce quickly and effectively but not severely, I think that is the art that we ought to really be striving for in any legislation.

Mr. EVANS. You also noted the expansion of Reserve forces. As our forces expanded, is the incidence of discrimination in employment against reservists or Guard members likely to increase unless there is protection against this discrimination?

Captain BUESENER. Oh, absolutely. You must remember that it is a matter of timing. For example, if the national requirement evolved into a scenario that required specific segments of our forces to be recalled, okay. We have some 70 percent of the cargo handling battalions and the Seabee battalions in the Reserves. If we had to go to that particular segment, it would be a massive impact on the employers of that particular segment. We saw partially in the Pueblo recall where we recalled three or four attack squadrons. As a personal footnote, I was at Naval Air Station New York for my first Reserve tour in that time and Mohawk Airlines was flying out of LaGuardia up to Albany. The management of Mohawk Airlines were praying that none of our transport squadrons at Floyd Bennett would be recalled because 70 percent of the pilots of their New York offices were, in fact, affiliated in that squadron. And if they lost 70 percent of their pilots all at once, they would really be in the hurt locker.

So I think it is a matter of timing. But the fact of the matter is that as we use more we are going to see more and more—a good way to put it is problem avoidance by the employer. Don't hire them in the first place and you are not going to get nailed later and you don't have to deal with all these management problems. So I think we have to be very careful on how we implement the law, and that is why I am not talking about severity. I am talking about rapidity of response to discrimination.

Mr. EVANS. If protection against discrimination in employment isn't provided, it will be harder to achieve the needed increase in the Reserve force expansion. What will be the effect on the national defense and the Federal budget as a result?

Captain BUESENER. Oh, I think we will see a dramatic decrease in readiness because you will lose force stability. If you have a gent that has 15 years' experience in the weapons system and you have sunk seven or eight advanced training courses in him plus 10 years of experience, and he is forced to opt for his bread and butter job and walk out, you have lost a significant piece of your readiness. And you don't replace them laterally, you have to grow them. So it takes you 5 or 6 years of the same costly training cycle to get the same expertise in the same squadron at the same point in time. Whatever we have to do to avoid that and to stabilize our forces and our manpower is extremely cheap, in my view, in the long run.

Mr. EVANS. All right. Thank you, Captain.

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Before we excuse the panel I will ask the minority counsel if he has any questions for the panel.

Mr. KINGSTON SMITH. I think we have covered the topic pretty well. I have no questions. Thank you.

Mr. EVANS. Thank you.

All right, gentlemen, we thank you for your testimony and appreciate your time today.

Mr. EVANS. At this point in the hearing I would like to request unanimous consent to insert in the hearing record an excerpt from title 39 of the District of Columbia Code which prohibited members of the D.C. Police and Fire Departments from serving in the D.C. National Guard. This statute has recently been amended to lift this prohibition, but the fact that this law was on the books illustrates the difficulties with employment faced by members of the Guard and Reserves, and we will enter that at this point in the record.

[An excerpt from title 39, District of Columbia Code appears on p. 80.]

Mr. EVANS. As our final panel representing veterans' organizations, we now call forward Ron Drach, with the Disabled American Veterans; Paul Egan, with the American Legion, also accompanied by Emil Naschinski. I am sorry if I mispronounced the name, sir.

We will let Ron start. Of course, your full statements will be made a part of the record at this point, and if you care to summarize, you may do so.

STATEMENTS OF RONALD DRACH, NATIONAL EMPLOYMENT DIRECTOR, DISABLED AMERICAN VETERANS; PAUL EGAN, ASSOCIATE DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION, ACCOMPANIED BY EMIL NASCHINSKI, ASSISTANT DIRECTOR, NATIONAL ECONOMIC COMMISSION, THE AMERICAN LEGION

STATEMENT OF RONALD DRACH

Mr. DRACH. Thank you very much, Mr. Chairman.

On behalf of the more than 1 million members of the Disabled American Veterans, it is our pleasure to appear before you today to discuss H.R. 2798.

Mr. Chairman, the DAV does not have an official position on H.R. 2798, but we do believe that the employment opportunities and rights of veterans, including those who have status as National Guard and Reserve, certainly need to be protected.

During the past 15 years we have had an opportunity to watch the devastating effect that unemployment can have on disabled and Vietnam-era veterans. All too often these groups of veterans are denied employment opportunities based on either covert, and sometimes overt, discrimination, sometimes the employer's improper perception of disabled and Vietnam-era veterans, the inability or the lack of desire to make reasonable accommodations for disabled veterans, poor information on the abilities of disabled and Vietnam-era veterans, and other reasons unrelated to an individual's ability to perform the functions of the job.

As I have listened here today I have often thought about the possibility of many of these individuals who are being discussed and are facing discrimination because of their Reserve status or their

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National Guard status, I just wonder how many of them may also be facing discrimination because of their Vietnam service status and which of the two may be the predominant discriminating factor. It also conjures up some thought as to the possible DOL protection that would apply should this bill be enacted and looking at it in concert with the protections already accorded Vietnam-era and disabled veterans under section 2012 of title 38 dealing with affirmative action.

Also, many of these employers may be covered already under the Federal statute dealing with affirmative action. I think that needs to be pursued a little further in terms of maybe some enforcement mechanisms that might already exist.

I was also intrigued by the gentleman's comment earlier about the swiftness of the enforcement as opposed to the severity of the enforcement. And from our experience with OPM, EEOC and OFCCP, there is certainly anything but swiftness of enforcement, let alone severity of enforcement. And even in the other area of severity enforcement, I think that the record speaks for itself as to how severe or how swift enforcement has been in the past.

We have seen legislation since 1972 designed to provide special emphasis or affirmative action on discrimination on behalf of veterans. I think the latest Bureau of Labor Statistics release of March 31, 1986, and I will just cite one part of it here that is disturbing to me, that 67 percent of the more severely disabled veterans, those rated 60 percent or higher, are not even in the labor force let alone counted as being unemployed. Now, if that legislation, that 15 years' history of legislation designed to protect these individuals has been ineffective, obviously, I think we have to be very cautious or very vigilant on future legislation of this nature to make sure that it is adequately enforced. And let us try to solve the problem before the problem becomes existent.

We believe very strongly that veterans are a special class in our society and as such should be entitled to receive certain preferences in the employment arena. We also believe that unjust and unfair treatment of veterans including those who still maintain a position with the National Guard and Reserve should be eradicated whenever and wherever it is encountered.

In reviewing the bill under discussion, we believe H.R. 2798 extends the proper protection to those individuals seeking employment who are also members of a Reserve or Guard unit. I think the issue again becomes one of enforcement.

I think we may have something in our favor in that the existing legislation dealing with reemployment rights in title 38, chapter 43, has been pretty effectively implemented and enforced over the history of that program. We have not encountered any real difficulties with enforcement of that, and I think part of it is because of the very explicit language.

Also, it is our belief that in those areas where cases got to the court system for the most part the courts have ruled in favor of the veteran, and there is some very positive case law that has developed over the years to enforce the reemployment rights. Now whether or not some of that case law rationale can be applied prospectively with what we are trying to do here perhaps remains to

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be seen. But perhaps some of the legal people could look at that to see what impact probably that case law may have.

Again, we have no official position but we think this bill is very worthwhile and would go a long way toward providing the equal employment opportunity that we all embrace.

That concludes my statement and I will be happy to answer any questions.

[The prepared statement of Mr. Drach appears on p. 81.]

Mr. EVANS. All right. Thank you.

Paul.

STATEMENT OF PAUL EGAN

Mr. EGAN. Thank you. Emil Naschinski will summarize for us, but I think it is important to note here that this, while it is a veterans' issue, is first and foremost a national security issue. It is also an issue about employment discrimination, but it is first and foremost a national security issue.

I couldn't help noting, while listening to Assistant Secretary Shasteen's statement, that DOL had a report that discrimination against reservists and guardsmen was a prevalent problem in Delaware. Well, it is no mistake that the principal employer, or employers in Delaware are Du Pont and Hercules Corporations, both of which are, if I am not mistaken, Federal contractors of some magnitude. And if I am not further mistaken, they also do some military contracting. If it is found on examination of this issue that Federal contractors, and worse, military contractors, are engaged in any of this discrimination that will have to be considered unconscionable.

I guess after having said that I will turn it over to Emil.

STATEMENT OF EMIL NASCHINSKI

Mr. NASCHINSKI. Thank you, Mr. Egan.

Mr. Chairman, it is indeed a pleasure to be with you this afternoon and to have an opportunity to share with you the views of the American Legion on H.R. 2798.

Mr. Chairman, the American Legion is painfully aware of the fact that many employers are guilty of discriminatory hiring practices. The kind of discrimination that we are referring to has nothing to do with biases based on race, creed, color, age, sex, or ethnic background. Rather, it has to do with the fact that many prospective employees are denied employment because they are members of either the National Guard or the Reserves.

The American Legion recognizes that employers may occasionally be inconvenienced by their employees' need to take time off to meet Guard or Reserve training requirements. However, we also recognize that without the contribution of our Reserve forces these employers could conceivably see the day when they could no longer offer jobs under the free enterprise system.

The American Legion and agencies such as the Department of Defense's National Committee for Employer Support of the Guard and Reserve, often receive phone calls and letters from guardsmen and reservists who have found that their civilian job opportunities have been adversely affected by their Reserve participation. Most

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of these men and women want to continue to serve their country, but they know that their bread and butter must come from a full-time civilian job. Unfortunately, their only alternative is either to leave the service and survive economically or stay in and hope that some patriotic employer will hire them.

Mr. Chairman, the American Legion is pleased to support adoption of H.R. 2798. While we are not naive enough to believe that this legislation would completely eradicate discrimination, we do believe that it would at least provide the members of our Reserve forces with some measure of protection and recourse.

There is also another reason that we support adoption of this bill. At one time our Reserve forces were seen merely as a supplement to our regular Armed Forces. Over the past 4 years, however, that has changed. Today, as never before, America is relying heavily on its National Guard and Reserve components to ensure our national security.

The reason for this change in the role of the Reserve forces is due in part to cost containment. However, another aspect of change is that under our new total force policy of defense, well over 50 percent of our wartime requirements are vested in the National Guard and Reserve components.

According to statistics that were supplied to us by the Department of Defense, over 100,000 guardsmen and reservists leave the military each year for one reason or another. If America is to continue her reliance on her Reserve forces for defense, can we realistically expect to be able to recruit for those vacancies if employers are allowed to continue their discriminatory hiring practices?

If Congress does amend chapter 43 of title 38 to prohibit discrimination in hiring, who will be responsible for enforcing the new law? We assume that this responsibility will be given to the staff of the Veterans Reemployment Rights Program. Unfotunately, because of the constraints in staffing and funding this program, like most of the other programs under the Assistant Secretary for Veterans Employment and Training, is hard pressed to meet its current workload. Congress must be willing and able to provide the necessary resources to the Assistant Secretary's office so that he can ensure that the letter of the law is carried out. Unless these resources are provided, the new law will be meaningless.

Mr. Chairman, that completes our statement. We will be happy to answer any questions you might have.

Mr. EVANS. All right. We thank you.

[The prepared statement of the American Legion appears on p. 84.]

Mr. EVANS. I will ask you, as a panel, a series of questions. The Department of Labor is, of course, responsible at this time for implementing and enforcing veterans' employment rights, as you just testified. What is your general evaluation of the Department, and what recommendations, if any, beyond the ones you have made do you make regarding its enforcement of this law if enacted?

Mr. NASCHINSKI. Mr. Chairman, proving that one has been discriminated against will be very difficult. As Mr. Shasteen testified earlier this afternoon, they receive approximately 2,000 complaints a year. These, of course, regard disputes between employees and employers concerning time off for Guard duty. DOL is able to re-

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solve about 95 percent of those cases without further cause for litigation. However, when it is unable to help the two parties come to some kind of an agreement the case is turned over to the Department of Justice for prosecution. The unfortunate thing is that once this happens, cases often languish for years without being resolved.

Unless the new legislation is given some kind of mechanism to address complaints, other than the system that is currently in place, it is going to be difficult to do anything about discrimination.

Mr. DRACH. I think, Mr. Chairman, that Mr. Naschinski's comments are well taken. However, I would not suggest that we not consider moving this bill along for those reasons. I think the same way in the area to some degree that we faced in 1972 and through 1975 on discrimination against Vietnam-era and disabled veterans employers out and out deny veterans' employment on that status. I mean they were not hesitant at all to say I am not going to hire you because you are disabled, I am not going to hire you because you are a Vietnam vet, etc. It wasn't until after the legislation was enacted that employers, and it wasn't really until about 1978 when employers started wising up and saying that we can't do that any longer. You know, we can't deny on that basis. So they started finding out other reasons.

If that experience comes to be again in this legislation, I think for a while we will continue to have employers deny employment solely on the basis of that status, and that is when you catch them cold. And that is when the swiftness and perhaps severity needs to be put into play.

Given again the general history of the reemployment rights statute and enforcement of chapter 43 of title 38, our experience has been one relatively positive. And if you look over the hearing records over the last 8 or 10 years, it is the one program in title 38 dealing with employment that we can generally speak good of relative to employment. Staffing is certainly going to be a problem if there is an influx of complaints. But I think it may be a little bit too early to cast judgment or to make any specific recommendations other than to watch it very closely and see how much attention is given to it once it is enacted and once complaints start coming in.

Mr. EGAN. I would just say in that regard Mr. Shasteen indicated that there were 28 specialists with the Veterans' Office of Reemployment Rights and some 200 others in the field that could lend some assistance. But as a Congressman, you know that if you receive one letter from a constituent it probably means that there are 2,000 people in your district that share that opinion. If there were only 2,000 complaints received in any one given year, there were probably a good deal more problems. If this law goes through, and we certainly support it and don't want to discourage this committee from moving forward, I think the number of complaints are going to increase fairly substantially. This will probably require some additional personnel within the Department of Labor to address the added complaints through investigation.

Going back once again to the point about this being a national security issue. If we are relying on the Reserve and the Guard that much, for that substantial a portion of our force needs in the case of an emergency, or even not in the case of an emergency, there

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has got to be some public relations concept developed that can be sold to both corporate entities as well as small "mom and pop" enterprises that there is an obligation, just as there is of every citizen in this country, to make some contribution. And if that means sacrificing an individual for 2 weeks in the summer or 1 weekend a month, then that simply has to be made necessary.

Enforcement is obviously going to be a very difficult problem to solve, but it is just simply going to have to be one of those issues that we will have to deal with as it comes up.

Mr. EVANS. Well, since there is no Federal law and many States themselves don't have laws regarding discrimination against the Guard and the Reserve there is not much data on the problem. Are you aware as veterans' organization representatives of any incidents of discrimination against members of the Guard and the Reserve in hiring, and have you compiled any data on that?

Mr. DRACH. No, we haven't, Mr. Chairman. But again in looking at the issue over the last couple of weeks and in sitting here today listening to some of the testimony, I wonder—No. 1, there is no Federal protection to some degree, so therefore you wonder how many cases go unknown. But I also wonder how many of these people that may be facing discrimination are also Vietnam-era veterans, and where do you separate the two and how do you separate the two? And the word is on the street with Vietnam-era and disabled vets that it doesn't do any good to file a complaint. Because if you do, at best it is going to take 3 years. And at worse, in 5 years it will be resolved in favor of the employer. So, you know, why even bother doing it? So I don't see anything out there.

Mr. EVANS. On that point, would you support maybe a less severe penalty with the surety of a penalty if that can somehow be effected? In other words, quicker justice maybe with lesser penalties might be more effective than more drastic penalties that are never delivered or take years to deliver?

Mr. DRACH. Well, I think if you had to choose between the two I would opt to go with what you just suggested. However, based on what we have seen thus far relative to Vietnam-era and disabled vets we have neither swiftness or severity. So I will settle for, you know, whatever we can get now and in the future.

Mr. EVANS. You were going to make a second point. I am sorry.

Mr. DRACH. I lost my train of thought on it. The various State laws I think are good, but I think we need a national policy. We need to tell the employer community that the Federal Government supports this concept, it is a national defense issue, and it is very important to the defense of the country.

I was going to put this in my prepared statement and I didn't do it intentionally, and I will tell you why. Well, I am not sure why I didn't now that it is all over and done with. When I first assumed some of the duties in employment back in the early 1970's, I attended several meetings of the Employer Committee for Support of the Guard and Reserve. Disabled American Veterans was a member of the committee. We signed a statement every year or 2 years, whatever was required. I have not heard from them in at least 10 years. I think the last meeting, or last notice I had was in 1974.

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Now here we are as an employer of veterans who have many of our employees who are members of the Active Reserve who do get time off, 2 weeks a summer, or whatever it is, to go to their Reserve duty, who do get their weekends without any penalty, and yet we are not being used in any way, shape or form to help promote the program. And I think that is tragic. And I think there are a lot of other employers out there that are very supportive of it, and like so many other programs there are only a few that spoil it for everyone else. But I think, you know, maybe the committee itself needs a kick in the pants to get them reactivated if that is the case. I don't know what the problem is, only to say that I have not been contacted in more than 10 years.

Mr. EVANS. Mr. Naschinski, you mentioned employers could possibly be inconvenienced by employee Guard and Reserve training requirements. Do some employers in your opinion simply refuse to hire a Guard or Reserve member because of the possibility of a future inconvenience caused by their training?

Mr. NASCHINSKI. That is correct, Mr. Chairman. Furthermore, with the emphasis that is being placed on the Guard and Reserve and their role in a defense situation, the chances are that time spent in training could be in many cases lengthened because of the level of sophistication that is involved in some military specialties. If that does occur, then it is certainly going to make this problem even worse.

Mr. DRACH. Could I comment on that?

Mr. EVANS. Yes.

Mr. DRACH. I think there are relatively few occupations in this country where an employer would be extremely inconvenienced by that person assuming that 2 weeks' duty or whatever the case may be, especially when they are given enough advance information that the person will be absent for that 2-week period. With the exception of, perhaps, CPAs during the tax season, I can't think of any other real good example where an employer would be extremely disadvantaged. Certainly you have got to make some adjustments. And everybody has to make adjustments every day. If somebody calls in sick tomorrow, you have got to adjust for that, even though it is only for 1 day. But if you are given 6 months, and I am not sure how much advanced notice you get. I know when several of our people worked for us we had more than enough advanced notice that they were going to be gone from June 5th to June 24th and we adjusted for that. We knew what we had to do to adjust for that and we did that. So I don't buy an employers excuse, and that is what I see it as, it is an excuse that they are going to be inconvenienced by that person's absence.

Mr. EVANS. I would ask minority counsel if he has any questions.

Mr. KINGSTON SMITH. Yes, thank you, Mr. Chairman.

Mr. Egan, your comment about the contractors in Delaware leads to a question. We have heard a discussion of the swiftness and severity of penalty. For Federal contractors, how would you view capital punishment; that is, debarment, as an ultimate penalty for discrimination against Reserve and Guard members in hiring?

Mr. EGAN. Well, first of all, let me clarify what I did say. In listening to the comments of Mr. Shasteen, the subject of a prevalent problem in Delaware came up and, knowing that Du Pont and Hercules are the largest employers in Delaware, I assume they are

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probably involved. This is conjecture on my part, and I am not indicting either of those two corporations by raising the issue.

But to completely debar a contractor from Federal contracts I think would be a bit excessive, but certainly something could be put into the bill to create enough of an incentive, depending on the size of the contractor, for compliance with the law.

Mr. KINGSTON SMITH. I would doubt that debarment would be an appropriate first offense punishment, but for repeated offenses might that be appropriate?

Mr. EGAN. I would have to say it depends on the contractor. As we are seeing with large defense contractors that are defrauding the Federal Government on a regular basis, there just isn't any other avenue to pursue. You can strip all the contracts from military contractor A, but then the contracts have to go to military contractor B. If you take all the contracts away from both, there is nobody left to produce the weapons systems. So it would have to be dependent upon the contractor.

Mr. KINGSTON SMITH. Thank you.

Mr. EVANS. All right, gentlemen, we thank you for your testimony and appreciate your time as well.

Having no further witnesses, the committee now adjourns.

[Whereupon, at 3:20 p.m., the subcommittee was adjourned, to reconvene subject to the call of the chair.]

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APPENDIX

Statement of the Honorable Bob McEwen
Sucommittee on Education, Training and Employment
April 23, 1986

Thank you, Mr. Chairman.

I also want to join with you in welcoming the witnesses here today, especially our distinguished Chairman, Sonny Montgomery. He has labored long and hard to foster the desire of our nation's young people to volunteer their talents and services in our Armed Forces. I look forward to receiving his comments and those of the other witnesses this afternoon regarding H.R. 2798.

Mr. Chairman, this is an appropriate forum to review the many employment issues associated with the those individuals who serve in the national guard or reserve. As you have noted, the Congress has sought to protect the jobs of these men and women who have volunteered for this military duty. However, it is indeed unfortunate that there have been some employers who discriminate against these men and women simply because of their military status.

In my view, if this nation is going to maintain adequate forces to honor our national secrity commitments, we must have the cooperation of all those concerned in formulating an effective policy to address this situation. In my view, H.R. 2798 is a reasonable proposal and seeks to end this type of discrimination. I want to express my commitment to resolve this matter in the most expeditious manner.

Thank you, Mr. Chairman.

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DONALD E. SHASTEEN
ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING
BEFORE THE
SUBCOMMITTEE ON EDUCATION, TRAINING AND EMPLOYMENT
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

April 23, 1986

Mr. Chairman and Members of the Subcommittee:

Thank you for giving me the opportunity to testify today concerning H.R. 2798, a bill which "prohibit(s) discrimination in employment because of the status of certain individuals as a member of a reserve component of the Armed Forces or as a member of the National Guard." Specifically, the bill would amend section 2021(b)(3) chapter 43 of title 38, United States Code, to make it unlawful for an employer to refuse to hire a person because such person is a member of a reserve component or the National Guard. By amending chapter 43 of title 38, which contains the veterans' reemployment rights (VRR) program administered by the Department of Labor, this proposed antidiscrimination provision would be administered by the Department in accordance with applicable provisions of this law.

Under the VRR program, the Department of Labor assists veterans in enforcing their statutory right to reinstatement to jobs they held prior to entry into military service, with seniority, status and pay to which they would have been entitled

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in the absence of military service. The same reemployment rights now also apply to employees who leave employment for National Guard duty or reserve military training.

The bill would protect reservists and members of the National Guard in the initial hiring situation where they may not be hired because of their obligation to participate in military drills or active duty for training.

We agree with the purpose of the bill. We believe that as in the situation of veterans' reemployment, no person should be denied initial employment because of a reserve or National Guard commitment. We recognize that the Nation's defense is dependent upon the reserve components, including the National Guard. Relying upon the reserve components under the Department of Defense "Total Force Policy" is an economical and effective way to protect our nation. Because we rely upon reservists and National Guard members it is prudent that we make it possible for the services to recruit and retain the necessary quality and quantity of part-time servicemen and women and get them to participate in meaningful training to maintain and increase their readiness.

Congress and the Department of Defense have recognized the direct connection between "employer support" and recruiting, retention, and readiness in the reserve components. The individual reservist or National Guard member is usually (but not always) paid for his military drills and active duty for

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training; however, this part-time compensation probably accounts for only a small percentage of his total annual income. If he were forced to choose between his obligations to his civilian employer and his obligations to the reserve or National Guard, he would almost certainly be forced to give priority to his obligations to his full-time civilian employer.

In order to make it possible for employed persons to participate in the reserve components, Congress has enacted two provisions for them as part of the veterans' reemployment rights law. Under section 2024(d) of title 38 U.S.C., a reservist or National Guard member has the right to take unpaid leave of absence from his civilian job to participate in military drills or active duty for training. Under section 2021(b)(3) of title 38 U.S.C., the reservist or National Guard member "shall not be denied retention in employment or any promotion or other incident or advantage of employment because of any obligation as a member of a reserve component of the Armed Forces."

Under section 2021(b)(3), as currently written, an employer is forbidden to fire an employee because of his military obligations, and it is likewise unlawful to discriminate against such an employee with respect to promotions or other advantages of employment; however, as currently written, the law does not prevent another significant form of discrimination. Other employment discrimination statutes (race, sex, age, and union

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affiliation) outlaw discrimination in hiring as well as other forms of employment discrimination. H.R. 2798 would provide the same protection for reserve and National Guard members.

As our nation increases its reliance upon the reserve components, more reservists and National Guard members will be participating in military training, and some of their training periods may be longer and more frequent. Thus, it is possible that there will be inconveniences for civilian employers. Some employers may be tempted to avoid these problems altogether by not hiring reservists or National Guard members in the first place. H.R. 2798 will assist in avoiding potential problems in this area.

We recognize that the training requirements of reservists and National Guard members may impose an inconvenience upon their civilian employers, but I respectfully suggest that this is justified by the contributions that reservists and National Guard members make to National defense.

The veterans' reemployment rights law dates back to 1940. We believe that the same concerns that gave rise to this law--the need for a strong national defense and the protection against discrimination of those who perform a needed public service--are the concerns that should lead to the enactment of this bill.

That concludes my formal statement. I will be pleased to respond to any questions.

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STATEMENT OF

PRINCIPAL DIRECTOR

OFFICE OF DEPUTY ASSISTANT SECRETARY OF DEFENSE

FOR RESERVE AFFAIRS

MANPOWER AND PERSONNEL

COLONEL FRANCIS M. RUSH, JR., USAF

HEARINGS BEFORE THE SUBCOMMITTEE
ON EDUCATION, TRAINING AND EMPLOYMENT
HOUSE VETERANS AFFAIRS COMMITTEE

APRIL 23, 1986

NOT FOR PUBLICATION
UNTIL RELEASED BY THE
SUBCOMMITTEE

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Mr. Chairman and members of the subcommittee:

It is a pleasure for me to appear before this subcommittee to discuss H.R. 2798, a bill which would prohibit employers from discriminating against members of the National Guard or Reserve in the hiring process. The Department of Defense supports this proposal.

As you know, members of the National Guard and Reserve are now protected, with respect to their employment, during initial active duty for training, active duty for training and inactive duty training. A reservist cannot legally be discharged from employment or denied promotion or any other incident or advantage of employment because of Reserve or Guard membership or obligations.

H.R. 2798 would amend chapter 43 of title 38, United States Code. It would establish a prohibition of the refusal to hire National Guard and Reserve members in the same part of the code that now provides protections against discharge based on reserve membership. This action, in our view, is long overdue. The current employment protections for reservists evolved out of those originally established for veterans in the 1940's. Perhaps this is why protections against hiring discrimination were not enacted earlier. Whatever the historical basis for the omission, it needs correction now.

Credible deterrence and the ability to execute our missions demands an adequate supply of trained and capable people to employ, maintain and support our modern weapon systems. Our dependence on the Guard and Reserve has never been greater. Over one-million members of the Selected Reserve are maintained in the

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high state of readiness which reflects the fact that any significant military action would require Selected Reserve forces, some of which are scheduled to be deployed in advance of their active component counterparts. The National Guard and Reserve are true partners in the defense of the United States within the Total Force.

Reserve forces routinely participate with active component units in realistic arms training and field exercises at home and abroad. For example, some 7,800 Wisconsin National Guard and Reserve members participated in the REFORGER logistical exercise in Europe in 1986. Approximately one-third of the airlift missions flown by the Military Airlift Command involve Air Reserve Forces crews. Three-fourths of the continental air defense is performed by the Air National Guard. By the end of 1987, 51 percent of the Army's combat forces and 52 percent of its support forces will be in the Army National Guard and Reserve.

Reservists train on, maintain and are prepared to employ state-of-the-art weapon systems and equipment, such as Abrams tanks, Bradley fighting vehicles, Blackhawk helicopters, M198 howitzers, Perry and Knox class guided missile frigates, C-5A transport aircraft and F-15, F-16 and FA-18 fighter/attack aircraft. Consistent with these missions, many reserve component training assignments have been closely integrated with the missions of active-duty units so that the reservist receives on-the-job training while providing valuable services to the armed forces. It is inevitable that greater reliance on the National

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Guard and Reserve has created demands for longer and more frequent training. Since this can obviously create additional problems for both reservists and employers, the Guard and Reserve are working hard to maintain a workable balance.

As with the active forces, the most vital element of the National Guard and Reserve is their people. Guard and Reserve members are firmly tied to their jobs and communities, and this is an important element of their strength. But it also creates a unique set of problems and the possibility for conflict between civilian jobs and part-time reserve military obligations.

Participation in the Guard and Reserve is peculiarly vulnerable to causing schedule conflicts with employers because of the typical reserve component training schedule--a single weekend a month, with periods of full time training of two weeks or more a year, and an initial period of training of a minimum of three months to a year or more. Potential or actual schedule conflicts impose costs on employers. Unfortunately, some employers seek to minimize these costs by discriminating against reservists. All such discrimination is of concern as it can affect the ability and willingness of the reservist to join and to serve.

The only direct evidence of discrimination in hiring is from individual cases. The sense of those who work these issues is that it is a growing problem, but we do not have hard data to support this impression. We do have data on other forms of discrimination from a 1979 study of the Army National Guard and Army Reserve conducted by the Rand Corporation.

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As part of this study, which was partly designed to collect data on factors influencing enlistment and reenlistment decisions and on civilian occupations, surveys were administered to junior enlisted members in paygrades E1 through E4 and to NCOs in paygrades E5 through E9. Several questions were asked of both groups regarding employer's leave policies and attitudes toward reserve service. The responses help to illuminate the costs imposed on reservists by nonsupportive employers as well as the magnitude of the problem. While the results do not directly address discrimination in hiring, it can be plausibly inferred that employers who are nonsupportive of current employees who are reservists may overtly or covertly discriminate in hiring.

Table 1 shows results from the junior enlisted survey concerning their experiences after completion of initial active duty for training (IADT). Approximately 50 percent did not return to their original employer. This group was asked for the main reason for not returning. Some proportion of those who lost their job prior to leaving for IADT or who did not have a job to return to must be attributed to factors connected with reserve participation.

Table 1

REASON FOR NOT RETURNING TO WORK FOR THE SAME EMPLOYER AFTER COMPLETION OF IADT

Reason	Percent
I quit/lost this job before leaving for IADT	22.7
Job not available when I returned	19.1
Other reason	50.7
Missing	7.5
(N)	3,545

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Both groups were asked about possible reasons for not reenlisting or extending their enlistment. The results here, as shown in Table 2, were rather overwhelming. Between 40 and 55 percent experience conflicts between reserve obligations and their primary civilian job severe enough to cause them to leave the reserves. This, of course, does not count early attritees who may have left because of such conflicts. We know from other studies that these early separation rates are very high (between 30 and 40 percent).

Table 2

REASON FOR NOT REENLISTING/EXTENDING:
CONFLICTS WITH CIVILIAN JOB

	E1-E4 Percent	E5-E9 Percent
Most important reason	24.0	19.8
Second most important reason	30.7	19.0
Other reasons (*not* conflicts with civilian job)	36.8	51.4
Missing	8.5	9.8
(N)	10,617	11,573

Questions about employers' leave policies are illuminating in that they provide insight into the financial costs facing reservists at the time of annual training. Federal, state and local governments provide military leave with pay up to 15 days for annual training. Some private employers follow this example. Table 3 indicates, however, that more than half of all reservists employed in the private sector do face costs in terms of either loss of pay or loss of vacation time when fulfilling their reserve obligation.

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Table 3

PRIVATE EMPLOYER'S LEAVE POLICY FOR ANNUAL RESERVE TRAINING

Leave Policy	E1-E4 Percent	E5-E9 Percent
Permits two weeks *extra* leave with full pay	8.2	7.6
Permits two weeks *extra* leave without pay	43.5	41.7
Permits two weeks *extra* leave but pays me *only the difference* between my military and civilian pay	17.0	32.7
Does *not* permit extra leave or pay, I must use my regular vacation	10.9	9.3
Other	5.6	3.2
Missing/N.A.	14.8	5.5
(N)	5,097	6,178

Respondents were also asked about their civilian supervisor's attitudes toward their reserve participation, problems in making arrangements with private employers to attend unit drills, and their assessment of the effect of their reserve participation on advancement in their civilian job. The distribution of responses to these questions is shown in Tables 4, 5, and 6.

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Table 4

CIVILIAN SUPERVISOR'S OVERALL ATTITUDE TOWARD RESERVE PARTICIPATION

(Private Employers Only)

	E1-E4 Percent	E5-E9 Percent
Very favorable	25.7	26.4
Somewhat favorable	20.1	18.6
Neither favorable nor unfavorable	31.8	33.6
Somewhat unfavorable	10.3	12.4
Very unfavorable	4.8	5.2
Missing/N.A.	7.3	3.8
(N)	5,097	6,178

Table 5

PROBLEMS MAKING ARRANGEMENTS WITH PRIVATE EMPLOYERS TO ATTEND UNIT DRILLS

	E1-E4 Percent	E5-E9 Percent
Serious problem	3.4	3.0
Somewhat of a problem	11.1	10.9
Slight problem	21.9	21.8
Not a problem at all	57.0	60.7
Missing/N.A.	6.6	3.6
(N)	5,097	6,178

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Table 6

EFFECT OF RESERVE PARTICIPATION ON ADVANCEMENT IN CIVILIAN JOB

	E1-E4 Percent	E5-E9 Percent
Helped me a lot	12.1	6.9
Helped me somewhat	15.3	10.8
Had no effect	53.4	66.5
Hurt my chances somewhat	9.5	10.6
Hurt my chances a lot	4.2	2.3
Missing	5.5	2.9
(N)	5,097	6,178

We conclude that between 10 and 20 percent of Guard and Reserve members have significant problems with their employers, and that about one-third of those who leave do so because of employment conflicts. More recent surveys show the same pattern. In a 1984 Survey of National Guard and Reserve members, which polled more than 13,000 reservists in all reserve components, thirty percent reported that their unit drills conflicted with their civilian jobs.

Reservists are patriotic and dedicated. They sacrifice time and energy for our national defense. But, while they find reserve service and comradeship rewarding, they must be confident that their service will not jeopardize their employment opportunities. The existing statutes providing employment protections for reservists are vitally important. The Department of Labor, which is responsible for administering the Veterans' Reemployment Rights chapter of title 38, United States Code, has

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indicated an increase in the number and complexity of cases involving members of the National Guard and Reserve.

The employment protection programs administered by the Department of Labor provide equity for the individual reservist and show an enforcement presence that assists the Department of Defense in recruiting and retaining reservists. In 1983, we established a Joint Task Force with the Department of Labor to provide a cooperative mechanism to review issues surrounding the employment rights of reservists. One outcome of the Joint Task Force was agreement on the need for a formal liaison with the Department of Labor. To facilitate and assure the necessary interaction in the development and implementation of program policy and compliance and enforcement strategy, we have assigned a full time Reserve legal officer to serve in the Department of Labor as the DoD liaison.

While statutory protections and an enforcement presence are a necessary foundation, we must have the enthusiastic voluntary cooperation and support of employers to meet our recruiting and retention goals. To this end, the National Committee for Employer Support of the Guard and Reserve was established to develop and promote among U.S. employers, both public and private, understanding of the National Guard and Reserve and thus gain their support through personnel policies and practices that will encourage employee participation in reserve programs.

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The National Committee supports State-level Employer Support Committees, involving influential members of local business and professional communities in all fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam and Saipan. It is also responsible for public information programs, including television and radio spots, directed at employers, supervisors and the public to increase understanding of the role of the Guard and Reserve in the Total Force and the importance of time off for training. The Committee also establishes contacts with professional, business, and labor associations and obtains official statements of support from associations and their member firms.

During the REFORGER '86 exercise mentioned above, 31 corporate, civic and media leaders, representing more than 50 percent of the business and industry that employs Wisconsin National Guardsmen, were flown to West Germany in a Wisconsin Air National Guard KC-135E. The group visited the Guardsmen in the field and received numerous briefings from senior commanders in Europe. Many members of this group took the time to write to Assistant Secretary Webb concerning their reactions. The following representative comments give a sense of the value of the experience:

"Quite frankly, I did not appreciate the essential role of the Guard and Reserve in assuring peace in the free world. I do now, and will relate the message whenever I can."

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"We will all, hopefully, spread the message to other employers, civic groups and citizens. The entire trip should enable us to better understand the role that the Guard and Reserve play toward protecting our country."

The National Committee's Ombudsman Program, established to provide information on legal protections for reservists and reserve employee responsibilities and to informally resolve problems that arise, has been highly successful. It has effectively resolved hundreds of employee/employer problems. In most cases these problems were settled through improved communication and understanding, and all parties benefited.

Cases of discrimination in hiring are frequently encountered in the Ombudsman Program. For example, a Naval Reservist from Virginia interviewed for an airport refueling job. His employee ID photo was taken and he was assigned a parking space. When he advised the interviewer of his reserve membership, however, he was immediately turned down for the job.

A job applicant from Baltimore, a food service specialist in the Army Reserve, applied to a major food chain. After a successful interview, he mentioned his reserve duties and was told it was company policy not to hire anyone with a military commitment.

A Naval Reservist applied for a position with an automobile agency in a small New York community. He had to depart shortly thereafter for annual training and was told to come to work following his return. When he reported back, he found someone else had been hired in his stead.

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Sometimes we are successful in resolving individual cases. An Army National Guardsman from Missouri completed a program of training to drive a tractor trailer. The local personnel manager of a major national communications firm told him he had a job if he would quit the Guard. Contact with the parent firm resulted in a favorable conclusion in this case, but there are obviously many, many more that we do not know about or would be powerless to resolve if we did. Sometimes discrimination in hiring is blatant, or strongly implied, as is the case with printed job applications which ask about reserve membership. More often it is difficult to establish. The enactment of H.R. 2798 will not end all discrimination against reservists, but we believe it will do much to reduce it. The simple truth is that discrimination in any form is unacceptable when it is aimed at the patriotic men and women who fill the ranks of the National Guard and Reserve. In our view, legal protection against such discrimination is long overdue.

Mr. Chairman this completes my formal statement. I thank you once again for the opportunity to present the views of the Department of Defense on this important subject, and I will be pleased to answer any questions.

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PUBLIC SERVICE INFORMATION REGARDING EMPLOYER SUPPORT

For 13 years the National Committee for Employer Support of the Guard and Reserve (NCESGR) has conducted an ongoing public service advertising campaign to elicit the support of employers of reservists for supportive personnel policies and the necessary time off for military training. Over the years, this campaign has evolved from a single advertisement in the business magazines to a full-service program utilizing all of the traditional media. From 1973 through 1984 (the last year for which figures are available), NCESGR received more than $325 million in pro bono time and space from the communications industry. During 1984 alone, the committee received $23.9 million in public service exposure from a contract expense of approximately $500.000. Neither figure includes donated space to local messages prepared by state governors, NCESGR's state committees or local business leaders.

While the creative development and production execution of the committee's public service advertising program is by a volunteer advertising agency and the Advertising Council, this campaign is administered by reserve officer with extensive civilian experience in the advertising and communications fields. Should any Member of Congress desire help in the preparation of a message targeted to elicit the support of his or her business constituency for members of the reserve forces, and requests such assistance through the office of the assistant Secretary of Defense for Reserve Affairs, NCESGR will provide specific manpower and economic impact figures and other relevant information to appropriately tailor a public service announcement to a localized audience.

INFORMATION ON EMPLOYEE ASSISTANCE REQUESTS

For example, in the first quarter of Calendar Years 1984, 1985 and 1986, the NCESGR Ombudsman received 453, 500, and 622 inquiries and requests for assistance respectively. These figures, by reserve component, are as follows:

	1st QTR84	1st QTR85	1st QTR86
ARNG	76	66	76
USAR	139	203	274
USNR	46	70	52
USMCR	11	11	9
ANG	26	11	22
USAFR	62	42	65
USCGR	5	3	6
Employers	88	94	118
Total	453	500	622

Many routine calls which do not require action by NCESGR are not logged and their is no central record maintained of complaints and inquiries handled by State ombudsmen. This makes trend analysis from the data difficult, but the data does clearly show a continuing high volume of questions and concern with matters involving legal protections for reservists and their rights and responsibilities as employees.

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NATIONAL GUARD ASSOCIATION OF THE UNITED STATES

ONE MASSACHUSETTS AVENUE, NORTHWEST • WASHINGTON, D.C., 20001 • (202) 789-0031

STATEMENT BY

LIEUTENANT GENERAL LA VERN E. WEBER (RET.)

EXECUTIVE DIRECTOR

of the

NATIONAL GUARD ASSOCIATION OF THE UNITED STATES

to the

Subcommittee on Education, Training and Employment

of the

House Committee on Veterans' Affairs

23 April 1986

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TESTIMONY BEFORE THE SUBCOMMITTEE ON EDUCATION,

TRAINING AND EMPLOYMENT

HOUSE COMMITTEE ON VETERANS' AFFAIRS

23 April 1986

Mr. Chairman, and members of the subcommittee, I sincerely appreciate this opportunity to appear before you today to present the views of the National Guard Association of the United States on employer support -- an issue directly related to readiness of the Army and Air National Guard.

THE ROLE OF THE NATIONAL GUARD

This year, the National Guard commemorates 350 years of service to the community and the nation. From the first organized militia units in the Massachusetts Bay Colony in 1636 until today, the National Guard has played an important role in the preservation of the freedom of this republic. A call to duty of the National Guard has historically signified the nation's willingness to undertake the sacrifices necessary to protect that freedom.

The Guard's historic role in defense of our nation was formally recognized with the initiation of the Total Force Policy in 1970. Today, the Guard is counted upon as a full partner in the Total Force. Current national strategy has Army National Guard and Air National Guard units "on the line" alongside active counterparts in a matter of days after mobilization.

The Total Force Policy has resulted in an increased reliance on National Guard and Reserve forces. Army and Air National Guard units are tasked in war plans developed in response to defense strategy directed by our national command authorities. This nation absolutely requires a well-equipped and well-trained National Guard if it is to be fully capable of fighting and winning any future conflict.

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SELECTED RESERVE MANPOWER

Although equipment, training, and facilities are essential, the most important factor in Army and Air Guard readiness is the ability to recruit and retain the required number of qualified personnel. This will become a more difficult task as the manpower pool of the nation continues to diminish, and could be further impacted by any reduction in popularity of military service among our service-aged population.

At the end of FY85, the ARNG had attained a strength of approximately 440,000 and the ANG had achieved an end strength of more than 109,000. With programmed growth of over 22,000 in the Army Guard and almost 6,000 in the Air Guard by the end of FY87, and continued growth programmed through FY90, the effectiveness of recruiting and retention efforts remains critical.

The New G.I. Bill Educational Assistance Program for the Selected Reserve, which began on 1 July 1985, has already proven to be a valuable incentive for across-the-board recruitment and retention. The National Guard Association strongly supports continuation of the New G.I. Bill and urges that the program be expanded to cover educational options, including high tech training, and be made permanent as quickly as the test results support such action. Any attempt to eliminate this extremely effective new incentive would have a drastic negative Guard and Reserve recruiting impact, in the opinion of the National Guard Association.

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The current Selected Reserve Incentive Program has also been very effective in providing targeted incentives to recruit and retain personnel with critical skills or who are found in specified high priority units. As with the G.I. Bill, authorization for enlistment and reenlistment bonuses should be made permanent entitlement programs in law, rather than be dependent on periodic approval of authority and annual appropriation of funds.

Due to the critical shortage of health care professionals and its potential impact on the initial warfighting capability of the Total Force, the National Guard Association also fully supports immediate approval of the Selected Reserve Health Professionals Incentive Act, (H.R. 1498), to improve recruiting and retention in this area. The programmed growth of medical units in the National Guard and Reserves will be difficult to attain without the added incentive of accession bonuses and continuation pay.

FAMILY AND EMPLOYER SUPPORT

In many instances, the greatest impact on the ability to recruit and retain an individual in the Selected Reserve is the support, or lack of support, given by the immediate family and the full-time employer of prospective members or current members.

Many legislative improvements have been made in recent years designed to encourage family support. The expansion of medical care to cover members for illness or disease incurred during inactive duty training and the provision of medical and space-available dental care for surviving dependents of members who die in any type of duty status are two examples.

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Several other proposals aimed at encouraging family support were included in the readiness initiatives sponsored last year by your Committee Chairman, Mr. Montgomery. We strongly support those initiatives.

With the increased reliance on the Guard and Reserve as full partners in the Total Force, it is also essential that every effort be made to ensure employer support of membership in the National Guard and Reserve. Such efforts should include legislation that would prohibit discrimination in hiring and which would provide an incentive in the form of tax relief for private sector employers of Guard and Reserve members. Again, both of these issues were included in Mr. Montgomery's initiatives. The National Guard Association strongly supports H.R. 2798, the subject of your review today. We believe this bill is essential if Selected Reserve membership goals are to be met in future years.

The increased reliance on National Guard and Reserve forces under the Total Force policy has significantly expanded the day-to-day peacetime operational mission requirements and the training necessary to operate more sophisticated weaponry. Training deployments to overseas exercises, such as the recent REFORGER exercise in Europe, are involving greater numbers and becoming more frequent. As the training requirement expands the need for full support of both the family and the employer becomes even more critical. More frequent, and often more lengthy, absence can lead to greater possibility of conflicts in schedules and pressure on members to separate from the Guard, or employer attempts to ensure new employees do not perpetuate the problem.

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LEGISLATIVE REQUIREMENTS

Currently employed Guard members are protected by federal law against discharge, denial of promotion, or loss of other employment benefits because of training obligations or membership in the National Guard. While pressure can still be applied in attempts to convince Guard members to end their military affiliation, the protection of federal law is a valuable deterrent against such discrimination in all but one critical phase -- the time of application for employment.

Many specific instances of refusal to hire members of the Guard and Reserve have been reported. However, few statistics are available since there is neither a formal reporting system for such acts of discrimination nor a clear and concise method of identifying and recording them. The employer can use several methods of determining the military affiliation of an individual and, with no legal prohibition, can deny employment simply because of a policy against hiring of Guard or Reserve members.

The National Guard Association believes there is a demonstrated need for legislation which would prohibit employers from discriminating against members of the National Guard and Reserve when hiring new employees. We recognize the cost and inconvenience that employers often face because of increasing Guard and Reserve training requirements. However, we must also recognize the important role being placed upon the National Guard and Reserve forces in the defense of our country.

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In order to ensure support of the members of the Guard and Reserve and also to encourage greater employer support, the National Guard Association strongly urges enactment of H.R. 2798, to end discrimination in hiring, and H.R. 3241, or similar legislation, to provide a tax credit to employers who employ members of the Guard and Reserve. A tax credit should help to offset the costs incurred by the employer in adjusting to the absence of the military member during training and active duty periods.

SUMMARY

Mr. Chairman, enactment of H.R. 2798 and some form of tax credit for employers will certainly not end all forms of discrimination against members of the Guard and Reserve. Family and employer pressures will always exist as long as there are competing demands on the Guard and Reserve member by the family, the workplace and the military unit. We need to provide legal protection for the employment rights of the individual willing to make sacrifices for the defense of our nation and we need to provide some assistance to the employer, as we are doing for the family, to compensate for his willingness to incur certain costs to accommodate that individual in meeting his military obligations.

We urge enactment of H.R. 2798 and consideration of H.R. 3241 or some alternative tax credit legislation.

We are grateful for the opportunity to present our views to your subcommittee and I would be happy to answer any questions you might have.

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Statement of

Colonel C. Judson Lively, Jr., USA (Ret.)

Acting Executive Director

Reserve Officers Association of the United States

Mr. Chairman and members of the Committee:

It is a privilege and a pleasure to be here. The Reserve Officers Association (ROA) appreciates your consideration of discrimination in the hiring of Reserve and National Guard participants, and we are grateful for this opportunity to comment on this problem which directly affects the security of our great nation.

The Reserve Officers Association represents nearly 125,000 Reserve officers from all of the uniformed services. The association is well aware of hiring practices which disadvantage Reserve and Guard members. Chartered by Congress for the purpose of promoting and insuring the adequacy of national security, ROA is concerned that hiring discrimination directly affects recruitment, retention and morale of our Reserve forces.

It is especially appropriate that this committee is addressing the question of Reserve and Guard hiring discrimination at this time. It is an accepted fact that the Reserve forces can provide defense capabilities for a cost far less than can be provided by the active component. Budget pressures have caused and will continue to encourage the shift of responsibilities from the active to the Reserve component in the effort to get "a bigger bang for the buck". Hiring

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discrimination and/or the perception that Reservists and Guard members are unable to compete without prejudice in the job market undermine the ability of the Guard and Reserve to attract and retain individuals of the quality and in the numbers needed to meet manpower needs. This inability threatens the evolution to a greater reliance on Reserve forces. Failure of the Reserve and Guard to meet manpower needs reduces readiness or increases defense costs--or both.

Within the Department of Defense the Office of the Assistant Secretary of Defense (Reserve Affairs) is responsible for Reserve manpower and continues to commit significant resources to employer support. The National Committee for Employer support of the Guard and Reserve has established state-level Employer Support Committees, involving influential members of local business and professional communities, throughout the United States. The committees promote public information programs to increase the understanding of the role of the Reserve and Guard in the Total Force and the importance of time off for training. Rationale is provided for hiring Reserve and Guard participants--those who serve their nation well make exceptionally good employees. But education alone does not eliminate hiring discrimination.

Calls from Reserve and Guard members who allege that they have been denied employment because of their service affiliations are common. Because ROA is without the resources and the authority to process these complaints, we refer them to the

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National Committee for Employer support of the Guard and Reserve. The Committee for Employer Support maintains records of these allegations, and the records can be made available for consideration by the committee. We believe that the incidence of hiring discrimination calls for immediate, strong action.

Title 38, United States Code, provides for the Veteran's Reemployment Rights program. The Department of Labor, which is responsible for administering the program, has been responsive to charges of employee discrimination alleged by Reserve and Guard members. But because of the Code's silence regarding hiring, the Department of Labor lacks the authority to correct allegations of hiring discrimination.

The Code's silence on hiring may be an oversight. Anti-discrimination statutes which address race, sex, religion, union activities, etc. clearly forbid discrimination in hiring as well as in promotions and retention. There are good reasons for employers to hire Reserve and Guard participants--not the least of which is that they insure the right of employers to own an enterprise with the freedom to make decisions.

At the beginning of the 99th Congress, Congressman G.V. (Sonny) Montgomery requested the assistance of the Guard and Reserve community (the Chiefs, the civilian leaders, and the Association) in establishing a series of initiatives aimed at improving the readiness of the nation's Reserve forces. After what might well be considered historic consultation and

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cooperation between these participants, a seven point initiative plan was developed. H.R. 2798, a bill introduced by Congressman Montgomery to prevent hiring discrimination in the initial hiring of Reserve and Guard personnel was a product of this initiative.

The Reserve Officer Association commends Congressman Montgomery for this initiative. H.R. 2798 would provide Department of Labor needed authority to address hiring discrimination, but the prohibition itself will not eliminate discrimination.

The ROA has in its possession a number of job application forms which solicit information pertaining to participation in the Reserve and Guard. As long as Reserve and Guard status is available to those making employment decisions, there is the danger that the information will be used against the applicant. If wise men can agree that an individual should not be denied employment because of his or her Reserve or Guard affiliation, then the solicitation of this information should also be outlawed.

We recognize that employers are called upon to make sacrifices because of ever increasing training requirements of the Reserve and Guard. We believe, however, that the employment of these citizen soldiers is not without reward. In recognizing those who had served, Winston Churchill once noted, "the reservist is twice a citizen". We are committed to insuring that every American have the right to serve his or her country without the fear that Reserve or National Guard membership might preclude employment.

The Reserve Officers Association applauds the committee for its concern and encourages the committee to act to end discrimination which negatively impacts Reserve and Guard recruitment and retention and thus threatens national security. I appreciate your time and attention.

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ENLISTED ASSOCIATION
NATIONAL GUARD OF THE UNITED STATES

TESTIMONY

OF

EXECUTIVE DIRECTOR ALAN D. OBERMILLER

OF THE

ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE UNITED STATES

BEFORE THE

HOUSE SUBCOMMITTEE ON EDUCATION, TRAINING AND EMPLOYMENT

ON

H.R. 2798

April 23, 1986

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ENLISTED ASSOCIATION
NATIONAL GUARD OF THE UNITED STATES

BIOGRAPHY

ALAN DECKER OBERMILLER is the Executive Director of the Enlisted Association, National Guard of the United States (EANGUS). He assumed his responsibilities on 8 July 1985. His office is located in the National Guard Memorial Building, One Massachusetts Avenue, N.W., Washington, D.C. 20001.

Mr. Obermiller is a retired Chief Master Sergeant of the California Air National Guard. A native of Indiana, Mr. Obermiller spent the majority of his adult years in the San Francisco Bay area of California. He completed 26 years of Air Technician Civil Service in 1981, and 38 years military aviation experience in 1983. From 1977 until 1983, Mr. Obermiller was the first Senior Enlisted Advisor of the California Air National Guard.

A. Personal Data:

1. Born 30 April 1926 in Fort Wayne, Indiana.
2. Wife: Married EULINE IRENE MILLER, 18 October 1947.
3. Children: Karen Gannion, Fremont, California; Kristen Morn, San Lorenzo, California; and Ellen Ammon, Newark, California.

B. Education:

High School Graduate, 1944; Basic Military Training, 1944; Aircraft Maintenance School, 1944; Aviation Cadet Pre-Flight, 1945; Northrop School of Aeronautics, 1946; In-service Leadership Training; 1947-1960; Civil Service Management Training, 1958-1979; USAF Senior NCO Academy Correspondence Course, 1975; Undergraduate College.

C. Military Service:

1. Enlisted Reserve Corps, 1943.
2. Active Duty, Army Air Corps, 1944-1945.
3. Active Duty, USAF, (SAC) 1947-1950.
4. Active Duty, USAF, 1951.
5. Air Force Reserve, 1952-1955.
6. Indiana Air National Guard, 1955.
7. California Air National Guard, 1955-1983.

D. Decorations and Awards:

Meritorious Service Medal
USAF Commendation Medal
California Commendation Medal
National Guard Minuteman Award
Freedoms Foundation George Washington Awards (1971, 1974).
Biographee, 'Who's Who In The West', 18th Edition
Biographee, 'Community Leaders of America', 12th Edition
434 TCW Outstanding Prior-Service Airman Award

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MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THE COMMITTEE, ON BEHALF OF OVER 50,000 MEMBERS OF THE ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE UNITED STATES, I APPRECIATE THIS OPPORTUNITY TO TESTIFY IN SUPPORT OF H.R. 2798, A BILL TO PROHIBIT DISCRIMINATION IN EMPLOYMENT OF MEMBERS OF THE NATIONAL GUARD AND RESERVE.

EANGUS - THE ACRONYM THAT IDENTIFIES THIS ASSOCIATION - STRONGLY URGES PASSAGE OF THIS LEGISLATION, ALTHOUGH WE REGRET THE NECESSITY OF HAVING TO CONSIDER LEGISLATION TO ACCOMPLISH WHAT WE VIEW AS A PATRIOTIC DUTY FOR THE WELFARE OF THE NATION.

NONETHELESS, H.R. 2798 IS NECESSARY TO INSURE THE CONTINUED GROWTH AND EFFECTIVENESS OF THE RESERVE COMPONENTS INTO THE 1990s. THE PRACTICALITIES OF TODAY'S WORLD MAKE IT NECESSARY TO TIGHTEN THE PROTECTION OF CITIZEN-SOLDIERS VOLUNTARILY SERVING IN THE RESERVE FORCES OF OUR COUNTRY. THIS LEGISLATION WOULD BROADEN THE PROTECTION TO NEW-HIRES AND RE-HIRES IN CIVILIAN EMPLOYMENT. WE NEED THIS ADDITIONAL ASSURANCE THAT INDIVIDUALS WILL NOT SUFFER PENALTIES FOR SERVING IN RESERVE COMPONENTS.

THIS ASSOCIATION REPRESENTS THE ENLISTED MEN AND WOMEN OF THE NATIONAL GUARD, BOTH ARMY AND AIR, A SIZEABLE PART OF THE RESERVE ESTABLISHMENT. WE, ALONG WITH OUR LEADERS, WILL BE CELEBRATING 350 YEARS OF MILITIA AND NATIONAL GUARD SERVICE TO THE NATION THIS YEAR. WE ARE PROUD TO BE A PART OF THE UNBROKEN CHAIN OF DEDICATION TO THE PRESERVATION OF DEMOCRATIC LIBERTIES THAT PRECEDES THE OFFICIAL BEGINNINGS OF THE

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UNITED STATES OF AMERICA BY ONE HUNDRED AND THIRTY-NINE YEARS. THE ENLISTED FORCE IS THE LARGEST SEGMENT OF THAT COMPONENT, AND REPRESENTS THE GREATEST RISK TO READINESS IF DISCRIMINATION IN EMPLOYMENT BECAUSE OF MILITARY SERVICE BECOMES A WAY OF LIFE. ENLISTED MEMBERS ESPECIALLY NEED PROTECTION IN THIS REGARD BECAUSE THE MAJORITY FIND FIRST-EMPLOYMENT IN THE BLUE COLLAR FIELDS WHERE EMPLOYMENT OPPORTUNITIES ARE LIMITED AND HIGHLY COMPETITIVE, AND, ONCE SECURED, DEPEND UPON SENIORITY FOR JOB PROGRESSION.

THE NUMBER OF YOUNG AMERICANS AVAILABLE FOR MILITARY SERVICE - THOSE BETWEEN THE AGES OF 17 AND 21 - IS IN DECLINE. IT IS PROJECTED TO CONTINUE INTO THE FORESEEABLE FUTURE. THIS TREND WILL PUT RESERVE RECRUITING EFFORTS IN DIRECT COMPETITION WITH THE PRIVATE SECTOR AND THE REGULAR SERVICES FOR THESE SAME INDIVIDUALS. COMPETITION WILL BE KEEN, AND THE COSTS ASSOCIATED WITH RECRUITING WILL ESCALATE. IF THE RESERVE COMPONENTS ARE TO SUCCESSFULLY COMPETE FOR A SHARE OF THESE RESOURCES, WE MUST INSURE THAT THE INDIVIDUAL WHO AGREES TO A MILITARY COMMITMENT DOES NOT SUFFER PENALTIES AS A RESULT OF THAT COMMITMENT. JOB PROTECTION IS FIRST AND FOREMOST AMONG THOSE ASSURANCES.

AS THE POOL OF NON-PRIOR SERVICE INDIVIDUALS DECLINES, WE MUST INCREASE OUR EFFORTS TO RETAIN OUR EXPERIENCED SOLDIERS AND AIRMEN. THEY, TOO, WILL NEED THE PROTECTION OF H.R. 2798 AS THEY JUGGLE CAREER MOVES NECESSARY TO INSURE FAMILY FINANCIAL SECURITY WHILE PERFORMING MILITARY SERVICE. IF, AT ANY TIME, EMPLOYMENT DISCRIMINATION BECAUSE OF MILITARY SERVICE BECOMES POPULAR IN OUR SOCIETY, WE WILL LOSE THE LONGEVITY AND

EXPERIENCE THAT HAS MADE THE NATIONAL GUARD AN EQUAL, RESPECTED, TESTED AND COST-EFFECTIVE PARTNER IN NATIONAL DEFENSE.

THE BUDGET DEFICITS - AND THE GRAMM-RUDMAN-HOLLINGS LEGISLATION - HAVE PUT US ON NOTICE THAT TRADITIONAL INCENTIVES FOR RESERVE MEMBERSHIP MAY BE IN JEOPARDY OR LOST ALTOGETHER IN THE DAYS AHEAD. WE CAN EXPECT LESS INSTEAD OF MORE. WHAT, THEN, WILL BE THE IMPACT ON THE VOLUNTEER CITIZEN-SOLDIER?

MEMBERS OF THE SELECTED RESERVE - VOLUNTEERS ALL - ARE SPECIAL PEOPLE; PEOPLE WITH A STRONG SENSE OF PATRIOTISM AND DUTY TO COUNTRY AND THEIR FELLOW MAN, BUT WE MUST NOT MAKE THE MISTAKE OF ASSUMING THAT THERE IS NO LIMIT TO THEIR DEDICATION. AS PRESSURES INCREASE FOR GREATER PARTICIPATION BY RESERVE COMPONENTS IN MILITARY TRAINING AND EXERCISES, EQUAL AND OPPOSITE PRESSURE IS EXERTED ON THE INDIVIDUAL BY HIS FAMILY AND EMPLOYER TO ABANDON HIS COMMITMENT TO NATIONAL SECURITY. THE REALITIES OF OUR PERSONAL LIVES ARE SUCH THAT THESE PRESSURES BECOME HARDER AND HARDER TO RESIST. THE ANNUAL REPORT OF THE RESERVE FORCES POLICY BOARD, FISCAL YEAR 1985, STATES "FAMILY AND EMPLOYER CONFLICTS CONTINUE AS THE MOST SIGNIFICANT FACTORS CAUSING PERSONNEL TO TERMINATE THEIR SERVICES IN THE RESERVE COMPONENTS." ADD TO THIS EMPLOYMENT DISCRIMINATION, AND WE HAVE THE POTENTIAL FOR A GRAVE SITUATION IN OUR ARMED SERVICES.

TO ILLUSTRATE THE DANGER INVOLVED, THE CONTRIBUTION OF THE RESERVE COMPONENTS TO NATIONAL DEFENSE HAS BEEN VARIOUSLY REPORTED, BUT A

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VALID OVERALL ESTIMATE IS THAT IT REPRESENTS 43% OF THE TOTAL ARMED FORCES AVAILABLE TO THIS NATION. THE FACT IS THAT AMERICA CANNOT FIGHT AND WIN WITHOUT ITS RESERVE COMPONENTS. IT IS NO LONGER THE 'SECOND TEAM', A 'RESERVE', NOR A REPLACEMENT POOL FOR THE REGULAR SERVICES. THE RESERVE COMPONENTS TODAY APPROACH HALF OF THE NATION'S ABILITY TO DEFEND ITSELF. IT IS TRAINED, TESTED, READY AND EFFECTIVE. WE, AS A NATION, SIMPLY CANNOT ALLOW IT TO DETERIORATE FOR ANY REASON.

BUT THE PART THE NATIONAL GUARD PLAYS IN THE NATIONAL DEFENSE STRATEGY IS ONLY PART OF THE STORY. THE SERVICES RENDERED TO THE INDIVIDUAL STATES AND THE CITIZENRY IN PROVIDING MANPOWER AND EQUIPMENT FOR EMERGENCY SERVICES IN TIMES OF NATURAL DISASTER AND CIVIL DISORDER CANNOT BE TOO STRONGLY EMPHASIZED. THERE CAN BE NO DOUBT THAT, IF THE NATIONAL GUARD DID NOT EXIST OR WAS NOT AVAILABLE TO OUR GOVERNORS IN SUCH TIMES OF CRISIS, THE COST OF PROVIDING THESE SERVICES FROM STATE RESOURCES WOULD SHARPLY CURTAIL OR REDUCE THE EFFECTIVENESS OF EMERGENCY SERVICES PROVIDED. THE EQUIPMENT TIME AND MANHOURS EXPENDED BY THE NATIONAL GUARD IN PEACETIME PUBLIC SERVICE EACH YEAR IS SUBSTANTIAL, BUT IT IS OF EQUAL IMPORTANCE THAT WE REALIZE THAT THIS ADDITIONAL PUBLIC SERVICE ALSO CONTRIBUTES TO THE EMPLOYMENT PROBLEMS EXPERIENCED BY INDIVIDUAL GUARD MEMBERS IN FULFILLING THIS PART OF THEIR MILITARY COMMITMENT. THE PROVISIONS OF H.R. 2798 WOULD GO FAR TO ALLEVIATE THE CONCERNS ASSOCIATED WITH THESE ADDITIONAL PERIODS OF TIME AWAY FROM CIVILIAN EMPLOYMENT.

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GENTLEMEN, WE BELIEVE THAT H.R. 2798 IS NECESSARY INSURANCE THAT THE INDIVIDUAL WHO SERVES HIS STATE AND NATION IN THE RESERVE COMPONENTS WILL NOT BE PENALIZED IN HIS CIVILIAN EMPLOYMENT AS A RESULT OF THAT CHOICE. WHILE WE, AS AN ENLISTED ASSOCIATION, ARE INTIMATELY FAMILIAR WITH THE CONCERNS AND NEEDS OF THE PRIVATE SECTOR - INDEED, OUR FIRST SERGEANTS WORK CONSISTENTLY WITH LOCAL EMPLOYERS TO ALLEVIATE THE CONFLICTS ASSOCIATED WITH MILITARY SERVICE - WE CANNOT IN CONSCIENCE BELIEVE THAT THOSE CONCERNS OVERRIDE THE NATIONAL INTERESTS. WE CANNOT CONDONE PRACTICES THAT MAKE NATIONAL SERVICE A PUNITIVE SITUATION, AND WE CANNOT LEAVE TO INDIVIDUAL OR CORPORATE DECISIONS THE AVAILABILITY OF OUR SOLDIERS AND AIRMEN FOR MILITARY DUTY. THE ISSUE IS TOO VITAL FOR THAT. WE NEED SOLID ASSURANCES THAT OUR PEOPLE WILL NOT SUFFER JOB DISCRIMINATION WHEN CONSIDERING A MILITARY COMMITMENT, OR WHEN CALLED AWAY ON THE NATION'S BUSINESS.

EANGUS IS GRATEFUL TO CONGRESSMAN MONTGOMERY AND THIS COMMITTEE FOR OFFERING THIS PROTECTION TO OUR MEMBERS, AND STRONGLY URGE YOU TO FAVORABLY RECOMMEND H.R. 2798 FOR ADOPTION INTO LAW. IT IS A STRONG AND EFFECTIVE MESSAGE AND BUILDING BLOCK IN MAINTAINING THE STRENGTH AND CAPABILITY OF THE RESERVE COMPONENTS AS A PART OF 'TOTAL FORCE' DOCTRINE.

MR. CHAIRMAN, I AGAIN WISH TO THANK YOU ON BEHALF OF OUR MEMBERSHIP AND ALL MEMBERS OF THE RESERVE COMPONENTS FOR THIS OPPORTUNITY TO COMMENT AND PRESENT OUR VIEWS ON THIS MOST IMPORTANT PIECE OF LEGISLATION.

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STATEMENT BY

CAPTAIN PAT R. LUCCI

U.S. NAVAL RESERVE (RETIRED)

NATIONAL PRESIDENT

OF THE

NAVAL RESERVE ASSOCIATION

TO THE

EDUCATION, TRAINING AND EMPLOYMENT SUBCOMMITTEE

HOUSE VETERANS' AFFAIRS COMMITTEE

FY 1987 DEFENSE AUTHORIZATION BILL

23 APRIL 1986

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CAPT P.R. LUCCI, USNR (RET)

CAPTAIN P.R. LUCCI, OUR NATIONAL PRESIDENT, IS A RESIDENT OF BUFFALO, NEW YORK. HE TOOK HIS BACHELOR OF SCIENCE DEGREE AT STATE UNIVERSITY OF NEW YORK MARITIME COLLEGE AND HAS ATTENDED THE UNIVERSITY OF BUFFALO LAW SCHOOL. IN CIVILIAN LIFE HE IS PRESIDENT/GENERAL MANAGER OF A FAST FOOD RESTAURANT CHAIN, OWNER/OPERATOR OF MISTER DOUGHNUT FRANCHISES IN WESTERN NEW YORK AND PRESIDENT OF SEVERAL FOODSTUFFS WAREHOUSING AND DISTRIBUTION COMPANIES OPERATING THROUGHOUT THE EASTERN UNITED STATES.

HIS NAVAL RESERVE CAREER HAS INCLUDED ASSIGNMENTS AS CHAIRMAN, BUFFALO RECRUITING DISTRICT ASSISTANCE COUNCIL; COMMANDING OFFICER, NAVAL RESERVE SUPREME ALLIED COMMANDER DETACHMENT 205; AND COMMANDER NAVAL RESERVE READINESS COMMAND, SYRACUSE. HE RETIRED FROM THE NAVAL RESERVE IN JULY 1983. HE HAS BEEN ACTIVE IN MILITARY ORGANIZATIONS AND COMMITTEES INCLUDING THE NAVY LEAGUE OF THE U.S., THE PRESIDENT'S COMMITTEE FOR EMPLOYER SUPPORT OF GUARD AND RESERVE, THE MILITIA ASSOCIATION OF NEW YORK, THE NAVAL ORDER OF THE U.S., AND THE WESTERN NEW YORK ARMED SERVICES COMMITTEE. AMONG HIS MILITARY DECORATIONS ARE THREE NAVY COMMENDATION MEDALS.

CAPTAIN LUCCI'S PAST ACTIVITIES IN THE NAVAL RESERVE ASSOCIATION INCLUDE PAST PRESIDENT, NRA THIPD DISTRICT AND PAST NATIONAL VICE PRESIDENT FOR PUBLIC RELATIONS. OTHER CIVIC ACTIVITIES HAVE INCLUDED MEMBERSHIP ON THE EXECUTIVE COMMITTEE OF THE BUFFALO NAVAL AND SEAMAN'S PARK AND A PAST DIRECTOR OF THE BUFFALO YACHT CLUB.

CAPTAIN LUCCI LIVES WITH HIS WIFE, DOROTHY, IN BUFFALO. THEY HAVE THREE CHILDREN.

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MR. CHAIRMAN, COMMITTEE MEMBERS, THE NAVAL RESERVE ASSOCIATION APPRECIATES THIS OPPORTUNITY TO PRESENT OUR VIEWS TO THE COMMITTEE CONCERNING H.R. 2798.

THE LONG AND ARDUOUS CAMPAIGN TO PROVIDE THIS NATION WITH A COMBAT CAPABLE AND READY RESERVE FORCE IS BEGINNING TO SHOW OUTSTANDING RESULTS. NEW MODERN, COMPLEX AND CAPABLE WEAPON SYSTEMS ARE BEING ASSIGNED TO RESERVE UNITS.

EVEN MORE SIGNIFICANT IS THE CHANGE IN PHILOSOPHY CONCERNING THE VALUE AND UTILIZATION OF THE RESERVE FORCE. THE RESERVE FORCES WERE ONCE GENERALLY REGARDED AS ASSETS ONLY IN TIME OF WAR OR SUBSEQUENT TO FORMAL MOBILIZATION ACTIONS. TODAY, THE RESPECTIVE ACTIVE FORCE CHIEFS ARE REALIZING THAT THE HIGH EXPERIENCE LEVEL OF RESERVE PERSONNEL COMBINED WITH MODERN EQUIPMENT PROVIDE A MOST VALUABLE PEACETIME ASSET AS WELL AS A SIGNIFICANT COMBAT SURGE CAPABILITY.

SECRETARY OF THE NAVY JOHN LEHMAN, IN HIS FISCAL YEAR 1987 POSTURE STATEMENT, REAFFIRMED HIS EARLIER COMMITMENT TO RESERVE FORCE STRUCTURE AND MODERNIZATION WHEN HE STATED:

> "FIVE YEARS AGO THE DEPARTMENT OF THE NAVY UNDERTOOK A MAJOR REORGANIZATION OF RESERVE COMPONENTS TO MOVE FROM A VERTICAL TO A HORIZONTAL RELATIONSHIP WITH THE ACTIVE FORCES. ESSENTIALLY, THAT MEANS THAT THE RESERVES MUST PROVIDE IMMEDIATE AUGMENTATION TO THE ACTIVE FORCE IN TIME OF EMERGENCY ACROSS THE ENTIRE SPECTRUM OF WARFARE. IT MEANS ALSO THAT, IN PEACETIME, WE RELY ON SELECTED RESERVES TO PROVIDE REAL-TIME FLEET SUPPORT ACROSS THEIR MISSION AREAS. TO EXECUTE THIS COMMON-SENSE POLICY, THE RESERVES MUST HAVE EQUIPMENT COMPATIBLE WITH THE ACTIVE FORCES. FOR INSTANCE, INSTEAD OF PROVIDING THE RESERVES ONLY SUCH EQUIPMENT AS BECOMES OBSOLETE AND IS REMOVED FROM THE ACTIVE FORCE, THERE MUST BE A SPECTRUM OF NEW AND OLD EQUIPMENT REFLECTED IN THE RESERVES PARALLEL TO AND IN THE SAME PROPORTION AS THAT IN THE ACTIVE FORCE. WE HAVE TAKEN FUNDAMENTAL STEPS TO BRING THIS ABOUT:
>
> "- ELEVEN MODERN OLIVER HAZARD PERRY AND KNOX-CLASS FRIGATES HAVE BEEN TRANSFERRED TO THE NAVAL RESERVE FORCE, WITH A TOTAL PROGRAM OF TWENTY-SIX FRIGATES PLANNED BY 1990.
>
> "- THE FIRST RESERVE SQUADRON HAS NOW TRANSITIONED TO THE F/A-18 AND TWO OTHER SQUADRONS TO THE F-14A.

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"- MODERN A-7E, E-2C, AND SH-2F AIRCRAFT HAVE OR ARE BEING TRANSFERRED OR ACQUIRED FOR RESERVE UNITS THIS YEAR, WITH OTHER FLEET AIRCRAFT TO FOLLOW DURING THE CURRENT FIVE-YEAR PLAN.

"- SQUADRON AUGMENTATION FLYING UNITS HAVE BEEN ESTABLISHED AND HAVE BEEN OPERATING SUCCESSFULLY WITH EACH ACTIVE DUTY AIRWING, PROVIDING CURRENT-TRAINED AVIATORS AND MAINTENANCE PERSONNEL FOR IMMEDIATE AUGMENTATION TO ACTIVE DUTY SQUADRONS.

"THE NAVAL RESERVE CONTAINS SEVERAL COMPONENTS WHICH EXIST ONLY IN THE RESERVES: 100 PERCENT OF THE NAVY'S U.S.-BASED LOGISTICS SUPPORT SQUADRONS; 100 PERCENT OF LIGHT-ATTACK HELICOPTER SQUADRONS; 100 PERCENT OF OUR COMBAT HELICOPTER SEARCH AND RESCUE CAPABILITY; 100 PERCENT OF NAVAL MOBILE INSHORE/UNDERSEA WARFARE UNITS -- THE 'BROWN-WATER NAVY' -- STRUCTURED FOR COMBAT ON INLAND WATERWAYS. UPON MOBILIZATION, THE RESERVES PROVIDE 99 PERCENT OF NAVAL CONTROL OF SHIPPING ORGANIZATION MANNING FOR MERCHANT SHIP MOBILIZATION AND CONVOY FORMATION FOR OVERSEAS OPERATIONS; 86 PERCENT OF OUR OCEAN GOING MINESWEEPERS; 86 PERCENT OF THE CARGO-HANDLING BATTALIONS VITAL TO PORT MANAGEMENT AND LOADING OPERATIONS IN COMBAT THEATERS; 85 PERCENT OF MILITARY SEALIFT COMMAND MILITARY PERSONNEL; 68 PERCENT OF NAVAL MOBILE CONSTRUCTION BATTALIONS, THE FAMED SEABEES; 66 PERCENT OF SPECIAL BOAT FORCES; 35 PERCENT OF MARITIME ANTI-SUBMARINE WARFARE PATROL AIRCRAFT SQUADRONS; 34 PERCENT OF NAVAL INTELLIGENCE PERSONNEL; 21 PERCENT OF ASW HELICOPTER SQUADRONS NEEDED FOR FLEET AND CONVOY ANTI-SUBMARINE DEFENSE EFFORTS; AND 14 PERCENT OF OUR TACTICAL SEA-BASED AVIATION CAPABILITIES."

STRESSING THAT THE NAVAL RESERVE CAPABILITY IS NOT ONLY A "POST MOBILIZATION" GAIN CAPABILITY, SECRETARY LEHMAN GOES ON TO STATE:

"IT IS NOT OFTEN REALIZED HOW FULLY INTEGRATED OUR NAVY AND MARINE CORPS RESERVES ARE BECOMING IN OUR ACTIVE FORCE STRUCTURE AND PEACETIME OPERATIONS. NAVAL RESERVE C-9 TRANSPORT AIRCRAFT MADE MANY TRIPS IN SUPPORT OF OUR MARINES ASHORE IN BEIRUT DURING 1983 AND 1984, AND PROVIDED DIRECT SUPPORT TO OUR OPERATIONS IN GRENADA DURING THE SAME PERIOD. THE READY RESERVE PROVIDED 349 VOLUNTEERS FOR THREE-WEEK TOURS OF DUTY ABOARD THE BATTLESHIP NEW JERSEY DURING ITS 11-MONTH 1984 DEPLOYMENT, ENABLING MOST OF THE CREW TO ROTATE HOME FOR LEAVE. AND FOR THE LAST TWO YEARS AVIATION SQUADRONS ABOARD DEPLOYED CARRIERS HAVE BEEN AUGMENTED BY RESERVISTS FROM SQUADRON AUGMENT UNITS (SAUS) ON VOLUNTARY TEMPORARY ACTIVE DUTY."

ADMIRAL JAMES D. WATKINS, CHIEF OF NAVAL OPERATIONS, VOICED HIS CONTINUED STRONG SUPPORT OF THE NAVAL RESERVE AND THE DEPARTMENT OF THE NAVY'S HORIZONTAL INTEGRATION POLICY WHEN HE STATED IN HIS FISCAL YEAR 1987 POSTURE STATEMENT:

"THE NAVY'S TOTAL MANPOWER NEEDS RESULT DIRECTLY FROM REQUIREMENTS OF THE MARITIME STRATEGY. HOWEVER, THE SIZE AND COMPOSITION OF THE

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ACTIVE NAVY ARE CONSTRAINED BY AFFORDABILITY AND ATTAINABILITY LIMITS, REQUIRING INTELLIGENT USE OF OUR RESERVES. WE HAVE MOVED FORWARD AGGRESSIVELY TO INTEGRATE AND MAXIMIZE RESERVE CONTRIBUTIONS WHILE ENSURING THAT NO MISSIONS ARE TRANSFERRED TO THE RESERVES WHICH EITHER RESULT IN A NET DEGRADATION OF READINESS, CANNOT BE SUPPORTED BY AVAILABLE RESERVE MANPOWER, OR ARE COSTLIER THAN LEAVING THEM WITH THE ACTIVE FORCES.

"THE FOCUS OF THIS PROCESS IS 'HORIZONTAL INTEGRATION'. FRONT-LINE SHIPS AND AIRCRAFT NOW COMPOSE A HIGH PERCENTAGE OF THE RESERVE INVENTORY, INCLUDING INCREASING NUMBERS OF RESERVE OLIVER HAZARD PERRY AND KNOX CLASS FRIGATES. BOTH RESERVE CARRIER AIR WINGS ALREADY FLY OR ARE PROGRAMMED TO RECEIVE FLEET COMPATIBLE STATE-OF-THE-ART FIGHTER, ATTACK, AND SURVEILLANCE AIRCRAFT. ADDITIONALLY, WE HAVE PROGRAMMED NEW MEDIUM ATTACK A-6E AND EA-6B SQUADRONS FOR RESERVE WINGS SO THEY WILL BE COMPLETELY MODERNIZED IN SYNCHRONIZATION WITH DELIVERY OF THE TWO NEWEST AIRCRAFT CARRIERS. THE DAY-NIGHT CYCLE FLIGHT OPERATIONS BY A RESERVE AIR WING ABOARD USS RANGER IN JANUARY OF THIS YEAR HAVE DEMONSTRATED THE PROGRESS OF HORIZONTAL INTEGRATION. THE SQUADRON AUGMENT UNIT (SAU) PROGRAM INITIATED IN 1984 INTEGRATED RESERVE TRAINING INTO ACTIVE FLEET UNITS AND INCREASED TOTAL FORCE READINESS. SAU AIR CREWS NOT ONLY FLY THE SAME AIRCRAFT BUT ALSO PERFORM ANNUAL ACTIVE DUTY FOR TRAINING WITH THEIR GAINING SQUADRONS. I INTEND TO CONTINUE AND EXPAND THE NUMBER OF PARTICIPATING RESERVE AIRCREWS. ONE-THIRD OF THE P-3 ORION MARITIME PATROL AIRCRAFT SQUADRONS ARE IN THE RESERVE. THESE SQUADRONS FLY THE MODERN P-3 ORION TACNAVMOD AIRCRAFT WHICH ALLOWS RESERVE FLIGHT CREWS TO DEPLOY AND OPERATE SIDE BY SIDE WITH ACTIVE SQUADRONS.

"THE PLANNED TRANSFER OF 25 ADDITIONAL ACTIVE SHIPS AND THE INTRODUCTION OF 31 NEW MINE WARFARE SHIPS AND 22 CRAFT OF OPPORTUNITY BY 1992 IS PARTICULARLY AMBITIOUS. TRENDS IN COMBAT READINESS FOR SURFACE UNITS ALREADY IN THE RESERVES ARE GRATIFYING. FOUR YEARS AGO, ONLY ONE RESERVE SURFACE SHIP IN FIVE REPORTED COMBAT READY. TODAY, THREE OUT OF FOUR ARE IN THAT STATUS."

AS THE STATURE AND CAPABILITY OF THE NAVAL RESERVE HAVE INCREASED, SO HAS THE PAY-BACK TO THE AMERICAN PEOPLE GAINED. ONE OF THE MOST PROXIMATE BENEFITS OF RESERVE FORCE MODERNIZATION IS THE ABILITY OF RESERVE FORCE SQUADRONS AND SHIPS, AS WELL AS NON-HARDWARE UNITS, TO ASSUME RESPONSIBILITY FOR NAVY OPERATIONAL COMMITMENTS IN PEACETIME.

THIS CONTRIBUTION REPRESENTS COST SAVINGS TO THE AMERICAN TAXPAYER EVERYDAY, AS THESE MISSIONS PERFORMED BY NAVAL RESERVISTS RESULT IN ACTIVE FORCE LEVELS LESS THAN WOULD OTHERWISE BE REQUIRED.

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VICE ADMIRAL CECIL J. KEMPF, USN, DIRECTOR OF NAVAL RESERVE, ADDRESSED THIS FACET OF THE MODERN NAVAL RESERVE IN HIS STATEMENT BEFORE THE READINESS SUBCOMMITTEE OF THE HOUSE ARMED SERVICES COMMITTEE WHEN HE STATED:

"'MUTUAL SUPPORT' DESCRIBES THOSE NAVAL RESERVE TRAINING EVOLUTIONS WHICH ALSO PROVIDE DIRECT ASSISTANCE TO ACTIVE DUTY UNITS IN THE PERFORMANCE OF THEIR PEACETIME MISSION. THIS MUTUAL SUPPORT ENCOMPASSES ALMOST ALL MISSION AREAS AND IS A PREFERRED METHOD OF TRAINING, SINCE TASKS PERFORMED DURING PEACETIME ARE SIMILAR TO THOSE EXPECTED AT THE OUTBREAK OF HOSTILITIES. PERHAPS EQUALLY IMPORTANT IS THAT OUR RESERVISTS TAKE REAL SATISFACTION IN TRAINING DUTY WHICH THEY KNOW MAKES A MEANINGFUL CONTRIBUTION TO THE NAVY.

"A FEW EXAMPLES OF THE MUTUAL SUPPORT PROVIDED DURING FISCAL YEAR 1985 ARE AS FOLLOWS:

"o RESERVE AVIATORS PERFORMED THE ENTIRE FLEET HEAVY LOGISTICS SUPPORT EFFORT WITHIN THE CONTINENTAL UNITED STATES (CONUS), FLYING ALMOST 22,000 FLIGHT HOURS.

"o SURFACE FORCE NAVAL RESERVISTS PROVIDED OVER 105,000 MANDAYS OF FLEET EXERCISE SUPPORT.

"o 3,600 MANDAYS WERE DEDICATED TO NAVAL RESERVE SHIPS BLAKELY, VALDEZ, AND PATTERSON FOR CENTRAL AMERICA PRESENCE OPERATIONS.

"o NAVAL RESERVE CONSTRUCTION FORCES PROVIDED MORE THAN 21,000 MANDAYS OF MUTUAL SUPPORT TO ACTIVE NAVY AND MARINE CORPS COMMANDS.

"o RESERVE COMPOSITE SQUADRONS (VC) PROVIDED OVER 5,000 HOURS OF SERVICES TO FLEET UNITS PARTICIPATING IN DISSIMILAR AIR COMBAT TRAINING (DACT), ACTING AS TARGET AIRCRAFT FOR AIR INTERCEPT TRAINING AND RADAR TRACKING EXERCISES, AND PERFORMING THE AGGRESSOR ROLE IN FLEET EXERCISES.

"o NAVAL RESERVE SECURITY GROUP UNITS CONTINUED SUPPORT OF THE NATIONAL CRYPTOLOGIC EFFORT THROUGH 36,000 MANDAYS OF PARTICIPATION IN PROJECT CLASSIC BUOYANT.

"o ELEVEN RESERVE PATROL (VP) SQUADRONS PROVIDED 44 WEEKS OF FLEET SUPPORT AT LAJES, AZORES, AND MISAWA, JAPAN.

"o RESERVE SQUADRONS FLEW MORE THAN 640 FLIGHT HOURS OF SURVEILLANCE SORTIES IN SUPPORT OF VICE PRESIDENT BUSH'S DRUG INTERDICTION PROGRAM.

"SIGNIFICANTLY, USS PRESERVER (ARS-8), A NAVAL RESERVE SHIP, IS THE PRIMARY SURFACE SALVAGE VESSEL AT THE SCENE OF THE SPACE CHALLENGER EXPLOSION. RESERVE CREWMEMBERS AND DIVERS ARE PARTICIPATING IN RECOVERY

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OPERATIONS. FARTHER SOUTH, NAVAL RESERVE SHIPS AND SQUADRONS ARE INVOLVED WITH NAVY, AIR FORCE, AND COAST GUARD UNITS IN DRUG INTERDICTION MISSIONS."

THE IMPACT OF GRAMM-RUDMAN-HOLLINGS AND THE DIMINISHING POPULATION OF MILITARY-AGE YOUTH, WHILE NOT EXPLICITLY DEFINABLE, CERTAINLY POINTS TOWARD NEAR-TERM FINITE LIMITS IN ACTIVE FORCE MANPOWER LEVELS.

IN THIS ENVIRONMENT, THE NAVAL RESERVE ASSOCIATION IS CONVINCED THE EXPANSION OF RESERVE FORCES IN TERMS OF BOTH SIZE AND UTILIZATION OFFER THE BEST AND MOST COST-EFFECTIVE WAY TO MAINTAIN OUR DEFENSE CAPABILITY.

WHILE GREAT IMPROVEMENT HAS OCCURRED, ONE AREA THAT REMAINS ARCHAIC IS THE BODY OF LAW AND REGULATION WHICH GOVERNS THE RIGHTS AND BENEFITS OF INDIVIDUAL RESERVISTS. THAT IS TO SAY, MOST EXISTING LAW REFLECTS THE REQUIREMENTS OF THE "OLD RESERVE" WHERE ONE (1) TRAINING DRILL PER MONTH AND TWO (2) WEEKS ACTIVE DUTY PER YEAR WERE THE TOTAL COMMITMENT.

TODAY, THAT IS NO LONGER THE CASE. MOST OF OUR NEW COMPLEX, EXPENSIVE WEAPON SYSTEMS REQUIRE EXTENSIVE TRAINING WITH SOME COURSES THREE (3) TO SIX (6) MONTHS IN LENGTH.

ADDITIONALLY, TODAY AND EVEN MORE SO IN THE FUTURE, PEACETIME OPERATIONAL TASKING WILL REQUIRE INDIVIDUAL RESERVISTS TO BE AWAY FROM THEIR JOBS MUCH MORE OFTEN.

AS THIS INCREASE IN DEMAND FOR OUR RESERVISTS OCCURS, THE IMPACT ON THEIR EMPLOYERS WILL ALSO INCREASE AND THE ATTRACTIVENESS OF A RESERVIST AS AN EMPLOYEE WILL TEND TO DECREASE.

LEGISLATION SUCH AS H.R. 2798 IS URGENTLY REQUIRED NOW AND IS STRONGLY SUPPORTED BY THE NAVAL RESERVE ASSOCIATION.

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NRA BELIEVES THIS PROTECTION WILL BE PARTICULARLY VALUABLE TO OUR ENLISTED PERSONNEL AND THOSE WHO ARE EMPLOYED BY SMALLER BUSINESSES.

NRA ALSO BELIEVES ADDITIONAL INCENTIVES IN THE FORM OF TAX RELIEF OR PREFERRED BUSINESS STATUS MAY ALSO BE DESIRABLE AND COST-EFFECTIVE TO CONSIDER IN THE FUTURE.

THANK YOU FOR AFFORDING THE NAVAL RESERVE ASSOCIATION THIS OPPORTUNITY TO EXPRESS OUR VIEWS AND SUPPORT FOR THIS IMPORTANT PIECE OF LEGISLATION. I WOULD BE MOST PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

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TITLE 39. MILITARY.

Chapter
1. Composition, Organization, and Control . . . . . §§ 39-101 to 39-109.
2. Armament, Equipment, and Supplies . . . . . §§ 39-201 to 39-217.
3. Commissioned Officers . . . . . §§ 39-301 to 39-313.
4. Noncommissioned Officers . . . . . § 39-401.
5. Enlisted Personnel . . . . . §§ 39-501, 39-502.
6. Active Military Duty . . . . . §§ 39-601 to 39-607.
7. Pay and Allowances . . . . . §§ 39-701 to 39-706.
8. Courts-Martial . . . . . §§ 39-801 to 39-809.
9. Miscellaneous Provisions . . . . . §§ 39-901 to 39-906.

Chapter 1. Composition, Organization, and Control.

Sec.
39-101. Militia; persons to be enrolled.
39-102. Exemptions from service.
39-103. Assessors to make list of persons liable to enrollment.
39-104. Duty of enrolled militia.
39-105. Ordering enrolled militia into service.
39-106. Organized militia; volunteer service; designation.
39-107. Reserve corps; organization; composition.
39-108. Disbanding companies below minimum strength.
39-109. President to be Commander-in-Chief.

§ 39-101. Militia; persons to be enrolled.

Every able-bodied male citizen resident within the District of Columbia, of the age of 18 years and under the age of 45 years, excepting persons exempted by § 39-102, and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrollment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 1; 1973 Ed., § 39-101.)

Cross reference. — As to National Guard, see Title 32, U.S. Code.

§ 39-102. Exemptions from service.

In addition to the persons exempted from enrollment in the militia by the general laws of the United States, the following persons shall also be exempted from enrollment in the militia of the District of Columbia, namely: Officers of the government of the District of Columbia; judges and officers of the courts of the District of Columbia; officers who have held commissions in the regular or volunteer Army, Navy, or Air Force of the United States; officers who have served for a period of 5 years in the militia of the District of Columbia or of any state of the United States; ministers of the gospel; practicing physicians; conductors and engine-drivers of railroad trains; members of the paid police and fire departments. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 2; 1973 Ed., § 39-102.)

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STATEMENT OF
RONALD W. DRACH
NATIONAL EMPLOYMENT DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON EDUCATION, EMPLOYMENT, AND TRAINING
OF THE
HOUSE VETERANS AFFAIRS COMMITTEE
April 23, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than one million members of the Disabled American Veterans and its Ladies' Auxiliary, I wish to thank you for the opportunity to appear before you today to discuss our views on H.R. 2798.

As you know, H.R. 2798 was introduced by Chairman G.V. "Sonny" Montgomery and proposes to add protection, in the employment process, to certain individuals who are members of a reserve component of the Armed Forces or a member of the National Guard.

Mr. Chairman, the Disabled American Veterans very much appreciates your interest in this very important issue and although we do not have an official position on the above cited bill, the employment opportunities and rights of veterans -- particularly service-connected disabled veterans -- is a matter with which we are greatly concerned.

During the past 15 years, we have had an opportunity to see the devastating effects unemployment can have on disabled and Vietnam Era veterans. All too often, these groups of veterans experience high unemployment rates because of overt and covert discrimination -- e.g., employers' improper perceptions of disabled and Vietnam Era veterans; the inability or lack of desire to make reasonable accommodations to disabled veterans; poor information on the abilities of disabled and Vietnam Era

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veterans and other reasons unrelated to an individual's ability to perform the functions of a job.

Since 1972, legislation has been enacted promoting such goals as "special emphasis," "affirmative action" and "non-discrimination" on behalf of veterans. Also, we have seen the design of new programs and modification of existing programs in an attempt to address the employment needs of veterans. With a few exceptions, Mr. Chairman, it is our belief that these attempts have met with little success. This Subcommittee is very familiar with these problems through the diligent oversight you have displayed over the last five years.

While the Disabled American Veterans has no official position on H.R. 2798, we do support the efforts of you, Mr. Chairman, as well as Mr. Montgomery. As previously indicated, we have come to abhor discrimination of any kind. The impact of unemployment, in and of itself, is devastating and can lead to various types of societal problems. Those problems can be and, often, are compounded when the cause of unemployment is discrimination or unfair treatment.

The Disabled American Veterans believes very strongly that veterans should be viewed as a special class in our society and, as such, entitled to receive certain preferences in the employment arena. We also believe that unjust and unfair treatment of veterans, including those who still maintain a position with the National Guard or reserve services, should be eradicated wherever it is encountered.

In reviewing the bill under discussion, we believe that it extends proper protection to those individuals seeking employment who are also members of a Reserve or Guard unit. This would be the first time such protection has been accorded to these individuals.

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If enacted, such protection would be codified in Chapter 43 of Title 38, U.S. Code, under Veterans Reemployment Rights. In our view, Mr. Chairman, this is one Chapter of Title 38, U.S. Code, that has, for the most part, been effectively implemented and enforced. The provisions embodied in Chapter 43 leave very little to interpretation and in those areas where interpretation has been needed, the courts have generally ruled in favor of veterans.

Given the long history of this program and the positive case law which has developed, we believe H.R. 2798 will go a long way toward providing equal employment opportunities to those individuals who have chosen to serve our country through active military service and through the Armed Forces reserve components and National Guard.

That concludes my statement, Mr. Chairman, I would be happy to answer any questions up may have.

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Statement of

The American Legion

1608 K STREET, N. W.
WASHINGTON, D. C. 20006

by

PAUL S. EGAN, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE COMMISSION
THE AMERICAN LEGION

and

EMIL W. NASCHINSKI, ASSISTANT DIRECTOR
NATIONAL ECONOMIC COMMISSION
THE AMERICAN LEGION

before the

SUBCOMMITTEE ON EDUCATION, TRAINING AND EMPLOYMENT
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

on

EMPLOYMENT DISCRIMINATION AGAINST NATIONAL GUARDSMEN AND RESERVISTS

April 23, 1986

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STATEMENT OF

EMIL W. NASCHINSKI
ASSISTANT DIRECTOR
NATIONAL ECONOMIC COMMISSION
THE AMERICAN LEGION

BEFORE THE

SUBCOMMITTEE ON EDUCATION, TRAINING AND EMPLOYMENT
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

APRIL 23, 1986

Mr. Chairman and distinguished members of this Subcommittee:

The American Legion appreciates the opportunity to present its views on HR 2798, which would make it illegal for employers to discriminate against National Guard personnel or Reservists in hiring. Resolution No. 343, which was adopted by The American Legion at our Sixty-seventh Annual National Convention in 1986, is attached to our written statement. We request that this resolution be made a part of the record.

The American Legion is painfully aware of the fact that many employers are guilty of discriminatory hiring practices. The kind of discrimination that we are referring to has nothing to do with bias based on race, creed, color, age, sex or ethnic background. Rather, it has to do with the fact that many prospective employees are denied employment because they are members of either the National Guard or the Reserves.

Mr. Chairman, The American Legion opposes any type of discrimination in hiring. Furthermore, we find the type of discrimination

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that many of our patriotic men and women of the National Guard and Reserves face when seeking employment to be particularly unacceptable.

The American Legion recognizes that some employers may occasionally be "inconvenienced" by their employees' need to take time off to meet Guard or Reserve training requirements. However, we also recognize that without the contribution of members of our reserve forces, employers could conceivably see the day when they could no longer offer jobs under the free enterprise system. That, in our opinion, is a part of the equation that is often overlooked by those employers who take a shortsighted position against hiring members of our National Guard and Reserve components.

The American Legion, like those government agencies concerned with national defense and/or veterans' employment, such as the Department of Defense's National Committee for Employer Support of the Guard and Reserves, often receives phone calls and letters from Guardsmen and Reservists who have found that their civilian job opportunities have been adversely impacted by their Reserve participation. They contact us hoping to find someone who has the power to intercede on their behalf. Most of these men and women want to continue to serve their country, but they know that their "bread and butter" must come from a fulltime civilian job. Unfortunately, their only alternative is to either leave the service and survive economically, or stay in and hope that some patriotic employer will hire them. At present, all that we can do for them is to offer our sympathy and our thanks for their unselfish dedication to their service and their country.

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Mr. Chairman, The American Legion is pleased to support the adoption of HR 2798. While we are not naive enough to believe that this legislation would completely eradicate discrimination, we do believe that it would at least provide the members of our reserve forces with some measure of protection and recourse.

There is also another reason that we support adoption of HR 2798. At one time, our reserve forces were seen as merely a supplement to our regular armed forces. Over the past four years, however, that has changed. Today, as never before, America is relying heavily on our National Guard and Reserve components to ensure our national security.

The reason for this change in the role of our reserve forces is, in part, due to cost containment. Another aspect of change is that under our new "Total Force" policy of defense, well over 50 percent of our wartime requirements are vested in our National Guard and Reserve components.

According to statistics supplied to us by the Department of Defense, over 100,000 Guardsmen and Reservists leave the military each year for one reason or another. If America is to continue her reliance on her reserve forces for defense, can we realistically expect to be able to recruit for these vacancies if employers are allowed to continue their discriminatory hiring practices?

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The American Legion has another question also. If Congress does amend Chapter 43 of Title 38, USC, to prohibit discrimination in hiring, who will be responsible for enforcing the new law? We assume that this responsibility will be given to the staff of the Veterans Reemployment Rights program. Unfortunately, because of constraints in staffing and funding, this program, like most of the other programs under the Assistant Secretary for Veterans Employment and Training, is hard pressed to meet its current workload. Congress must be willing and able to provide the necessary resources to the Assistant Secretary's office so that he can ensure that the letter of the law is carried out. Unless these resources are provided, the new law will be meaningless.

In closing, Mr. Chairman, The American Legion would like to commend you and the other members of this subcommittee for your initiative in this important matter, and for your continuing interest in the welfare of America's veterans. That concludes our statement. I will be happy to answer any questions that you might have.

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SIXTY-SEVENTH ANNUAL NATIONAL CONVENTION
OF
THE AMERICAN LEGION
AUGUST 26-28, 1985
NEW ORLEANS, LOUISIANA

RESOLUTION NO.: 343

COMMITTEE : NATIONAL SECURITY

SUBJECT : NATIONAL GUARD AND RESERVE EMPLOYER SUPPORT

WHEREAS, The Congress of the United States has passed legislation (Chapter 43 of Part III, Title 38, U.S. Code) to provide protection to individuals who leave their employers to enter military service; and

WHEREAS, Currently there are no Federal laws that prohibit employers from discriminating against members of the National Guard and Reserves in the selection process; and

WHEREAS, While employers cannot discriminate against a potential employee on the basis of sex, race, creed, sexual orientation or age, they can establish quotas or not select Reservists or members of the National Guard because of their continuing military obligation; and

WHEREAS, Without establishing laws to provide protection in hiring for members of the National Guard and Reserves the security of our nation will be jeopardized by individuals deciding not to join the guard or reserve; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in New Orleans, Louisiana, August 26, 27, 28, 1985, that we go on record requesting that legislation be introduced to prohibit discrimination in hiring by employers because of an individual's membership in the National Guard or Reserves.

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WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSE

CHAIRMAN DASCHLE TO DEPARTMENT OF DEFENSE

G.V. (SONNY) MONTGOMERY, MISSISSIPPI
BOB EDWARDS, CALIFORNIA
BOB EDGAR, PENNSYLVANIA
DOUGLAS APPLEGATE, OHIO
RICHARD C. SHELBY, ALABAMA
DAN MICA, FLORIDA
THOMAS A. DASCHLE, SOUTH DAKOTA
WAYNE DOWDY, MISSISSIPPI
LANE EVANS, ILLINOIS
MARCY KAPTUR, OHIO
ALAN B. MOLLOHAN, WEST VIRGINIA
TIMOTHY J. PENNY, MINNESOTA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
J. ROY ROWLAND, GEORGIA
JOHN BRYANT, TEXAS
JAIMIE J. FLORIO, NEW JERSEY
KENNETH J. GRAY, ILLINOIS
PAUL E. KANJORSKI, PENNSYLVANIA
TOMMY F. ROBINSON, ARKANSAS
MACK FLEMING
CHIEF COUNSEL AND STAFF DIRECTOR

REPUBLICANS
CHALMERS P. WYLIE, OHIO
BOB MICHEL, OHIO
CHRISTOPHER H. SMITH, NEW JERSEY
DAN BURTON, INDIANA
DON ELLIOTT, TENNESSEE
MICHAEL PLIMHAM, FLORIDA
NANCY LEE JOHNSON, CONNECTICUT
GUY V. MOLINARI, NEW YORK
THOMAS J. RIDGE, PENNSYLVANIA
WILLIAM M. HENDON, NORTH CAROLINA
JOHN E. ROWLAND, CONNECTICUT

NINETY-NINTH CONGRESS

G.V. (SONNY) MONTGOMERY
Chairman

U.S. House of Representatives
COMMITTEE ON VETERANS' AFFAIRS
335 CANNON HOUSE OFFICE BUILDING
Washington, DC 20515

April 24, 1986

COL Francis M. Rush, Jr.
Principal Director
Office of Deputy Assistant Secretary
of Defense for Reserve Affairs
Manpower and Personnel
U.S. Department of Defense
Room 3E325
The Pentagon
Washington, D.C. 20301

Dear COL Rush:

I regret that time did not permit asking you all of the questions that the Members of the Subcommittee had planned to submit to you at the hearing of April 23, 1986, on H.R. 2798, a bill which would prohibit discrimination in employment because of the status of certain individuals as members of a reserve component of the Armed Forces or as members of the National Guard.

It will be appreciated if you will respond to the following questions by May 9, 1986. These questions, together with your answers, will be made a part of the official hearing record.

1. What number and percentage of the Reserve and National Guard had prior service in the active forces during the Vietnam era? Please indicate by reserve component and service-wide total.

2. If employment conflicts are not reduced in the future, what will be the impact on the ability of the reserve components to recruit and retain the high quality individuals they need?

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3. The inclusion of representatives of the business community in the Reforger '86 exercise was obviously quite successful. Do you have plans to repeat this effort? Are community leaders invited to participate and/or observe guard and reserve activities at local levels?

Sincerely,

TOM DASCHLE
Chairman
Subcommittee on Education,
Training and Employment

TD:ek

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H.R. 2798

Question. What number and percentage of the Reserve and National Guard had prior service in the active forces during the Vietnam era? Please indicate by reserve component and service-wide total.

Answer. The information required to accurately respond to this question is not available in Service or reserve component personnel data systems and retrieval of this data would require a manual screening, involving many hundred man-hours. We are, therefore, unable to provide this information.

Question. If employment conflicts are not reduced in the future, what will be the impact on the ability of the reserve components to recruit and retain the high quality individuals they need?

Answer. While recruit quality has risen dramatically since 1978, attrition among the lower enlisted grades continues to be a challenge. A Rand corporation analysis of the Army's reserve components indicates that 10 to 20 percent of all reservists experience significant employment related conflicts and suggests that as many as one-third of all losses are due at least in part to these conflicts. These conflicts can be expected to continue to affect the retention of high quality individuals. Further growth of National Guard and Reserve forces is programmed and recruitment will be more difficult with the declining youth population. This makes it all the more important that we do all we can to reduce losses due to employment conflicts both through programs to gain employer understanding and support and through adequate protection in law against employment discrimination.

Question. The inclusion of representatives of the business community in the REFORGER '86 exercise was obviously quite successful. Do you have plans to repeat this effort? Are community leaders invited to participate and/or observe guard and reserve activities at local levels?

Answer. The REFORGER '86 experience was a strong positive step taken to inform key employers of the significance of the military training received by their guard and reserve employees. This firsthand experience can do much to stimulate and enhance employer support and to help eliminate discriminatory practices against reservists. During 1985 the Department of Defense, through the National Committee for Employer Support of the Guard and Reserve, provided opportunities for employees from 20 states to observe out-of-state training, including 12 civic leader trips to Washington, and opportunities for employers from 35 states to observe in-state annual training. These trips were highly successful and of great value to the Guard and Reserve in increasing employer understanding of their training mission. The REFORGER '86 exercise was unique in that it involved a very large number of Guard and Reserve members from one State. There are no plans for a similar effort at this time, but future occasions may arise where such an effort would be beneficial. These "boss lift" projects will continue within the individual states, however, and employers will be encouraged to observe training in the field whenever possible.

CHAIRMAN DASCHLE TO DEPARTMENT OF LABOR

DEMOCRATS
E. G. (SONNY) MONTGOMERY, MISSISSIPPI
DON EDWARDS, CALIFORNIA
BOB EDGAR, PENNSYLVANIA
DOUGLAS APPLEGATE, OHIO
RICHARD C. SHELBY, ALABAMA
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CHIEF COUNSEL AND STAFF DIRECTOR

NINETY-NINTH CONGRESS
G.V. (SONNY) MONTGOMERY
CHAIRMAN

U.S. House of Representatives

COMMITTEE ON VETERANS' AFFAIRS
335 CANNON HOUSE OFFICE BUILDING
Washington, DC 20515

April 24, 1986

REPUBLICANS
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G.WOOD HILLIS, INDIANA
GERALD B.H. SOLOMON, NEW YORK
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GUY V. MOLINARI, NEW YORK
THOMAS J. RIDGE, PENNSYLVANIA
WILLIAM M. HENSON, NORTH CAROLINA
JOHN G. ROWLAND, CONNECTICUT

Honorable Donald E. Shasteen
Assistant Secretary for Veterans
Employment and Training
U.S. Department of Labor
Room S1315, Francis Perkins Bldg.
200 Constitution Ave., N.W.
Washington, D.C. 20210

Dear Mr. Secretary:

I regret that time did not permit asking you all of the questions that the Members of the Subcommittee had planned to submit to you at the hearing of April 23, 1986, on H.R. 2798, a bill which would prohibit discrimination in employment because of the status of certain individuals as members of a reserve component of the Armed Forces or as members of the National Guard.

It will be appreciated if you will respond to the following question by May 9, 1986. This question, together with your answer, will be made a part of the official hearing record.

> Under H.R. 2798, the Labor Department will be assuming added responsibilities. In the era of Gramm-Rudman and doing more with less, is the Department prepared to successfully undertake these new responsibilities?

Sincerely,

TOM DASCHLE
Chairman
Subcommittee on Education,
Training and Employment

TD:ek

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U.S. Department of Labor

Assistant Secretary for
Veterans' Employment and Training
Washington D.C. 20210

MAY 0 8 1986 MAY 13 1986

The Honorable Tom Daschle
Chairman, Subcommittee on Education,
Training and Employment
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of April 24, 1986, inquiring about the projected financial impact of H.R. 2798. Thank you also for permitting me to testify about that bill during your hearing on April 23, 1986.

We have 33 veterans' reemployment rights (VRR) professionals working at 23 offices around the country. The total staff of the Veterans' Employment and Training Service (VETS) is 279. Every VETS office serves as an intake office for VRR complaints, and any VETS employee can be called upon to assist a VRR investigation. We have recently undertaken a cross-training program in order to ensure that each VETS employee understands the VRR law.

The VRR law already makes it unlawful to discharge an already-employed reservist or National Guard member because of his military obligations or to discriminate against him with respect to promotions or other incidents or advantages of employment. As you know, H.R. 2798 would amend 38 U.S.C. Section 2021(b)(3) to also outlaw discrimination in hiring. Since this is a new provision, we have no firm estimate as to the number of additional complaints that we would be required to investigate if H.R. 2798 is enacted. I do believe that we have an effective system in place for enforcing the VRR law, and we can utilize that system to correct hiring discrimination as well as the other forms of discrimination already forbidden by the VRR law.

Thank you for your active support and leadership for the employment rights of reservists and members of the National Guard. If I can be of any further assistance, please let me know.

Sincerely,

Donald E. Shasteen

DONALD E. SHASTEEN

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